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THE ATTITUDE OF THE STATE TOWARDS TRADE UNIONS AND TRUSTS

THE analogy between trade unions as combinations on the side of labor and trusts as combinations on the side of capital is frequently referred to in current discussion. The designation, "labor trusts," as a term of opprobrium for trade unions, has been rendered familiar by the daily press, and with less success extreme opponents of combinations have at times sought to add to the unpopularity of the trusts proper by stigmatizing them as "employers' unions." If this analogy is of any real significance some weight ought to be attached to it as a guide in shaping governmental policy. It ought to be recognized that trade unions and trusts are parts of a general combination movement, which should be studied and dealt with in accordance with some consistent plan designed to conserve what is good in the tendency towards organization and to check what is evil. It is the purpose of this article to consider the trade union and the trust from this point of view and to formulate such a plan for their regulation.

To the student of economic phenomena who starts out with the preconceived notion that trade unions and trusts are phases of a general combination movement, the very different policies which democratic states have adopted towards them must appear surprising if not inexplicable. Confining our attention to English-speaking countries influenced by the traditions of English law,[1] we find that as regards trade unions the last one hun-

[1] For the recent tendencies of foreign legislation and judicial decision *cf.* Walker, "The Law Concerning Monopolistic Combinations in Continental Europe," POLIT-

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dred years have witnessed a revolutionary change in the state's attitude. Under the combination acts in force in England a century ago, combinations among wage-earners even for the most obvious purposes of mutual benefit, such as securing higher wages or shorter hours, were criminal, and those participating in them were liable to severe penalties. Though this statutory condemnation was withdrawn in 1824, the courts continued for some time to hold that combinations that led to strikes were conspiracies at common law and to punish them accordingly. The view that strikes were an unwarrantable interference with the business of the employer was, as is well known, also held by American courts in the early part of the last century.

Both in England and in the United States, however, public opinion was more tolerant of strikes than were the courts; and in both countries, partly through legislation and partly through changes in the judicial interpretation of the common law, the ordinary policies of trade unions have gradually been legalized. In England, since 1875, trade unions have been freed from the risk of being condemned as conspiracies while peaceably pursuing the ordinary purposes of organized labor by the express declaration of Parliament that nothing done in connection with a trade dispute by a combination shall be deemed a conspiracy unless the same act performed by an individual be punishable as a crime. The only development in the field of English law during the last thirty years that can be represented as inimical to labor organizations is the much discussed judicial decision in the Taff Vale case, in which it was held that the funds of trade unions are liable to attachment for damages on account of injuries for which the union may be held to be legally responsible. That a decision so much in harmony with the general trend of English law should have been set aside by act of Parliament, as this has been by the Trades Dispute Act of December 21, 1906, is a further illustration of the extent to which the attitude of the state towards combination on the side of labor has changed in the mother country.

ICAL SCIENCE QUARTERLY, March, 1905; vol. xx, pp. 13–41. The conclusions reached by the author through his study of European continental experience are, as might be expected, favorable to trust regulation and opposed to trust suppression.

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In the United States there has been a similar liberalizing of the law in reference to combinations of labor. Strikes for ordinary purposes have long been distinguished from conspiracies by our courts; and the highest court in one of the states (New York) has gone so far in one of its decisions[1] as to uphold a strike which had for its purpose the prevention of the employment of workmen not members of the striking organization. If certain arguments advanced by the court in this case should come to be generally accepted, all of the special restraints which the law of conspiracy has imposed upon men acting in combination would be withdrawn, and trade unions would be even freer in the United States than they already are in the United Kingdom.

But the attitude of tolerance towards combinations of wage-earners that has displaced the older policy of condemnation and suppression in England and the United States is after all negative rather than positive. An indication of what it is likely to lead to with the further progress of the democratic spirit is furnished by what has already taken place in New Zealand and Australia. There, wherever courts of arbitration have been established to substitute reason and justice for superior strength and staying power as arbiters in labor disputes, the awards of these courts habitually give to members of labor organizations preference of employment. Only when organized labor has been fully employed is there an opportunity under these awards for the unorganized man, the scab, to gain employment. Thus in Australia and New Zealand the trade union is virtually accepted as an organ of the state itself, and its members are accorded such privileges that the lot of the non-member is hard indeed.

In marked contrast with this attitude of the state towards the trade union, the combination on the side of labor, is its attitude in the United States towards the trust, the combination on the side of capital. Instead of accepting such combinations as the natural fruits of industrial progress or leaving it to the courts to adapt the common law of conspiracy to the novel situations to

[1] National Protective Association *v.* Cummings, 170 N. Y. 315 (1902).

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which these combinations give rise, most of the states and Congress itself have expressly condemned them in sweeping anti-trust acts. As interpreted by the supreme court of the United States, the federal anti-trust act has been held to condemn reasonable as well as unreasonable combinations,[1] and its limitation to commerce among the several states has alone prevented it from having a most serious influence on the industrial development of the country. In other English-speaking countries (excepting Canada) there has been no similar anti-trust movement. Trusts are not encouraged as are trade unions, but there has been no effort to legislate them out of existence. Nor is this to be explained, as some writers have asserted, by the absence of trusts in these countries. As Mr. Macrosty's recent book[2] has shown conclusively, the United Kingdom has its full share of capitalistic combinations. The failure of these to arouse any very general anti-trust sentiment in that country must be ascribed to the absence in England of those causes which have made American trusts a public danger.

In order to understand why such different treatment is accorded to trade unions and trusts in the United States it is only necessary to recall the benefits usually ascribed to the former and the evils commonly laid at the door of the latter. A review of these alleged benefits and evils will also serve as a useful test of the value of the analogy which is the guiding thread of this discussion.

The principal benefits credited to trade unions may be summarized in three propositions:

(1) They enable wage-earners to bargain on more nearly equal terms with their employers, and hence lead to fairer wage contracts.

(2) They tend to give greater stability to the relations between employers and employees by lessening strikes and lockouts, and thus make for industrial peace.

(3) They train their members in habits of self-restraint and self-government, and thus serve as useful schools of citizenship.

[1] United States *v.* Trans-Missouri Freight Association, 166 U. S. 290 (1897).

[2] The Trust Movement in British Industry.

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It is characteristic of the present state of economic thought that each one of these propositions is open to dispute. Many American employers would deny them all, but they would also go on to attack the very principles of trade-unionism, and thus betray the fact that their views have had little influence on the recent course of American legislation or even judicial opinion. On the other hand, the majority of economists and an overwhelming majority of intelligent wage-earners would accept them and urge them as a sufficient reason for the tolerant attitude towards trade unions that has come to prevail in democratic countries.

While far from denying the general truth of these propositions in favor of labor organizations, I think it must be admitted that they are subject to important exceptions. Organization on the side of labor, when its advantages become appreciated, may easily be carried to a point which enables the union to have the upper hand in bargaining with the employer. To use this advantage to force the harassed employer to grant better terms than he would be willing or able to maintain in the long run is short-sighted; but trade unions sometimes are short-sighted, just as the employer who is in a position to sweat his employees is sometimes short-sighted in not paying living wages, and thus gradually driving away the labor supply on which his own long-run prosperity depends. Moreover, a situation which permits a strong union to take advantage of weak employers is hardly one that makes for industrial peace. On the contrary, the existence of the union with its short-sighted leaders is a constant incentive to industrial war. Only when the employers also become organized and bargaining on equal terms is again possible, are contracts likely to be made to which both sides will adhere with some degree of strictness. Finally, the value of trade unions as schools of citizenship depends largely on the sort of ideals that are accepted and inculcated by the leaders and on the sort of methods that are adopted for attaining trade-union ends. In the light of recent revelations the Western Federation of Miners, for example, will hardly be held up as a useful school of citizenship. Its standards may have been no lower than those of the employers'

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organization which it had to combat, but neither can well be defended as an agency making for better self-government on the part of a free people.

Each of the above propositions, then, while true in general, fails to cover the whole case. Intelligently directed trade unions, which are not carried away by a sense of their ability to demand and secure wages at monopoly rates for the labor supply which they control, doubtless bargain with the typical modern employer, who is a large employer, on more equal terms than individual wage-earners. The wage contracts they secure for their members are fairer and therefore more enduring. But there are trade unions of a different type. For them liberty spells license; and the practices of which they have been guilty (for example, in the building trades in the larger American cities) are as reprehensible if not quite so far-reaching as any charged against the trusts. They have at times completely abandoned all idea of dealing fairly with employers and have limited their exactions only to what the latter could be forced to concede. They have been guilty of violence and intimidation on a scale that makes the phrase "industrial war" an accurate characterization of the trade disputes to which they have been parties. Their leaders have been convicted of corruption and graft and yet have been upheld by the organization in a way that has reflected on the honesty and integrity of the rank and file. Finally, in place of the ideals of good workmanship, temperance, fidelity to contracts and self-control which are essential to good citizenship in a republic, they have inculcated fraud, disregard of agreements and violence.

Happily this characterization is true of no union at every stage of its development. It is also untrue of many unions, probably of most unions, at all stages of their development. It cannot be denied, however, that it accurately describes some unions at some stages of their development. It is these last that keep active the hostility of well-meaning employers to trade unions in general. They do harm out of all proportion to the direct range of their influence; and any measures that could be taken to curb these excesses of unionism would be even more of a boon to the better and more common type of labor organization

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than to the community generally. It is on these grounds that, at a later stage, I shall attempt to defend a change in the present tolerant but negative attitude of the American states towards trade unions as part of a modified policy toward the combination movement as a whole.

Turning now to the evils charged against the trusts, we may summarize them also in three propositions:

(1) They have advanced prices and have extorted huge monopoly profits from helpless consumers.

(2) They have allied themselves with the common carriers of the country to evade the spirit and often the letter of the law requiring the latter to treat all shippers alike.

(3) They have used unfair methods to crush their competitors. For example: they have lowered their prices below cost at competitive points while retaining them at monopoly heights elsewhere; and they have forced iron-clad agreements upon retailers, requiring them to boycott other than trust products.

These practices, proved against a few of the trusts, have served to engender a wide-spread distrust and even hatred of all of them. Without stopping to inquire whether such practices are the necessary or even the principal fruits of the movement towards combination on the side of capital, public opinion has condemned the whole tendency. The anti-trust acts are a response to this anti-trust sentiment.

As a dispassionate study of trade unions results in a somewhat qualified recognition of the benefits with which they are commonly credited, a similar study of the trusts in operation leads one to qualify the statement of the evils with which they are commonly charged. Unreasonably high prices, at least over short periods, have undoubtedly been exacted by many of the trusts. Some, like the Standard Oil Company, because of conditions peculiarly favorable to the realization of monopolizing ambitions, have been able to control prices so as to reap large monopoly profits over long periods. Many, perhaps most, of the trusts, however, have not advanced prices or extorted unreasonably high profits from the consuming public, either because the situation did not permit of such a policy or because it was recognized that moderate profits over a long term of

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years were more desirable than excessive profits for a year or two followed by an almost inevitable reaction and loss.

As regards the other clauses in the indictment brought against the trusts a similar verdict is to be rendered. Many have been guilty at times; others have been guilty all the time; still others have not been guilty at any time, either because of the nature of their business or because of the greater conservatism or honesty of their business managers.

It would be a great injustice to the American business men who have taken part in the trust movement to think that a desire to share in monopoly profits extorted by unfair means from a reluctant public was their dominant motive. From the point of view of the business man the arguments for combining his capital and abilities with those of other business men, and for carrying such combination to a point where a certain amount of control may be exercised over prices and output, are fully as convincing and defensible as are, from the point of view of the wage-earner, the arguments for trade unions. The economies resulting from large-scale production call for production on a scale continuously increasing with every improvement in the means of transportation and communication. Even before manufacturing industry had grown up to the limits in the economically desirable size of the producing unit as fixed by the railroad and the telelegraph, new standards were set by the trolley car and the telephone. Still later the automobile and the wireless telegraph have contributed their portion towards the concentration of industry. With the growth of the size of the producing unit that is most economical and the accompanying heaping-up of capital in fixed forms, the losses due to unregulated competition and the resulting variable market have increased greatly in magnitude. To escape these losses by combining with other producers sufficiently to steady prices and outputs is, from the point of view of the business man, the dominant reason for entering the pool or the trust. That this is the case is proved by the world-wide scope of the combination movement. Wherever modern methods of transportation and machine industry are found, there is found also the tendency towards combination. Germany, with her state-owned railroads

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dealing impartially with all shippers, has at least as many cartells as the United States has trusts. England, although without a protective tariff, "the mother of trusts," is little behind the protectionist countries in the combination movement. Moreover, as has already been indicated, in Germany and in England there is not the anti-trust sentiment that is found in the United States. This is chiefly because in neither country have the evils appeared which public opinion in the United States associates with the trusts, and there is therefore less to blind the ordinary citizen to the positive advantages of combination.

Until quite recently the formal condemnation of capitalistic combinations in American anti-trust acts has been important in the field of morals rather than in the field of business. Under our divided system of government and according to the earlier decisions of the courts, power to deal effectively with the trust appeared to be vested neither in the state legislatures nor in Congress. Their business went merrily on while the sentiment against them was temporarily appeased by the enactment of statutes strong in words if weak in execution. The moral effect of this situation has been most unfortunate. In the minds of those opposed to the trusts—that is, the great majority of the voters of the country—the impression has been created that the rich and powerful are able to evade the law with impunity. Widespread distrust of our governmental machinery has been engendered, and an atmosphere of cynicism has been created that tends to paralyze all efforts towards reform. In the minds of those interested in the trusts a contempt for law and a spirit of lawlessness have been developed that are equally if not even more dangerous. Convinced of the injustice and inexpediency of the anti-trust acts and of the justice and expediency of evading them by almost any means, trust managers have been changed from law-abiding citizens into habitual law-breakers and have lost their power of discriminating between legitimate methods of advancing their business interests and methods which at an earlier period they would have been the first to repudiate. Thus, if the evils enumerated above have been characteristic of many American trusts, it has been in no small

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degree because of the crudity of the legislation which has thus far been enacted with a view to curbing them.

The latest phase of this situation is the earnest effort of the present executive to enforce the federal anti-trust act and the amended interstate commerce act in a way that will bring it home to these giant corporations that they are still creatures of law. The pending suits to dissolve the Standard Oil Company of New Jersey, the holding company which perpetuates the oil trust, and the sixty odd corporations which constitute the tobacco trust will, if successful, no doubt be made precedents for attacking the other trusts. When it is considered what would result from this policy should it be upheld by the courts, the bitter denunciations of the president and all his works which have begun to appear in the financial press are perfectly comprehensible. The business community has no sympathy with the anti-trust acts. It perceives clearly that the combination movement has behind it sound business considerations. It sees no reason why legislation should not be confined to the evils connected with the trusts—and most business men will go so far as to admit that there are serious evils—instead of prohibiting combinations altogether. That the president now in office had nothing to do with the enactment of the anti-trust act and that it is his sworn duty to enforce it are facts which business men easily overlook, when they contemplate the injury which will be inflicted upon their financial interests if the law be interpreted in anything like a literal sense and enforced with any degree of rigor.

The country is thus exposed to the evils which unwise legislation usually produces, magnified by the greatness of the interests involved and by the moral awakening of the recent past, which gives the present federal executive more personal power for good or ill than has been enjoyed by any of his predecessors since Lincoln. It need hardly be added that the remedy for the situation is not a relaxation of the determination to restore confidence in the law by enforcing such statutes as Congress sees fit to pass, but a repeal by Congress of the unwise and indefensible anti-trust act. It is the sweeping condemnations of this act that make the task of the supreme court so dif-

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ficult in deciding whether or not the trusts are engaged in interstate commerce to an extent that brings them under federal control. If the existing law were repealed and a reasonable regulative act were substituted, which should address itself directly to the evils of capitalistic combinations but put no obstacle in the way of the formation of such combinations for purposes and in ways not opposed to public policy, the whole atmosphere would be cleared. That the courts would uphold Congress in a serious effort to regulate the trusts whose business is of national scope will hardly be questioned. That business men would rally to the support of such a measure and coöperate in securing its enforcement seems equally certain. The only question is how it would be regarded by the classes in the community among whom hostility to trusts has become an article of faith. It is this class that determines the public opinion which just now dominates Congress. Can it be won over to a saner view of the trust problem? Will the present leaders of public opinion from highest to lowest imperil their popularity by pointing out the unwisdom of the existing anti-trust legislation and by recommending to Congress the substitution of a reasonable regulative measure for the present anti-trust statute? Upon the answers to these questions the political and industrial development of the United States for the next few years very largely hinges.

It was the purpose of this article to consider whether the analogy between the trade union and the trust was more than formal. We have seen how widely different has been the attitude of the state in the recent past towards these two forms of combination. We have seen also that the tolerant but negative attitude of the law towards the trade union permits the continuance of policies on the part of some unions that are squarely opposed to the public interest. Finally we have seen that the very different attitude of the law towards the trust, that of sweeping condemnation, has brought the country into a critical situation, because it prohibits what the sound judgment of the business community approves, while it fails effectively to prevent the evils which alone justify condemnation of the trusts. It now remains to consider whether the analogy between the

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trade union and the trust is capable of affording any suggestions for constructive legislation that shall curb the bad tendencies of trade unions, now too commonly ignored, and also the evils of the trusts, which there is now an equal tendency to exaggerate.

If, as we have argued, combinations on the side of capital advance the general welfare as well as combinations on the side of labor, a repressive policy towards either is indefensible. If, furthermore, both forms of combination are susceptible of abuse, as will be generally conceded, then it is the duty of the state to adopt towards both a policy of regulation and control which shall prevent abuses, without checking any of the beneficial tendencies in the combination movement.

When we pass beyond these somewhat vague and general propositions to a consideration of the exact form of regulation and control of trade unions and trusts that should be attempted in the United States, the problem is at once complicated by our dual system of government. The regulation of trade unions can hardly be undertaken by the federal government without a constitutional amendment. On the other hand there seems good ground for believing that a plan for the federal regulation of the trusts along the line of the federal license or federal charter system might be brought into operation with the approval of the courts. In any case it is clear that the trusts are engaged to a considerable extent in commerce among the several states, and that they may more easily be brought under federal control than the trade unions, which are not engaged in interstate commerce in any sense that the courts have yet recognized. If it were the purpose of this article to deal with the details of the regulative policy, this circumstance, growing out of our peculiar form of government, would compel me to present a plan for state regulation and control of the trade unions, and a plan for federal regulation and control of the trusts. For such a task the limits of a review article would be inadequate; and I shall therefore confine myself to indicating the general features of the policy of regulation which I advocate, without endeavoring to fit it exactly to the political conditions of the United States.

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In general outline the evils connected with trade unions and trusts are not unlike. Trade unions are under temptation to try to secure monopoly earnings for their members, just as trusts are tempted to ask monopoly prices for their products. To secure monopoly returns in either case it is necessary to control the supply of the thing sold. Trade unions which enter on this policy try to maintain a monopoly by keeping down their membership on the one hand and by making the lot of the non-member as uncomfortable as possible on the other. Trusts similarly try to maintain their monopoly by controlling as far as possible raw materials and transportation facilities, and by putting all sorts of obstacles in the way of the business success of their competitors. These lines of policy on the part of both forms of combination give rise to most if not all of the serious evils connected with them. In the case of trade unions they lead to unfair methods of keeping down the membership, and to intimidation and violence towards non-members. They create a situation in which the employer feels that he is paying higher wages to his employees than he would need to pay if competent workmen who would be glad to work for him were allowed freely to do so, and in which therefore the relations between employer and employees are strained and likely at any time to terminate in a strike or a lockout. In the case of trusts they lead to discriminatory arrangements with the railroads and unfair methods of competition as regards business rivals. Finally, so far as these policies are successful, they tend to keep wages and prices at monopoly heights and thus to oppress the consuming public.

As the evils connected with trade unions and trusts have a general resemblance to one another, so the regulations that would be necessary to check these evils are not unlike. In the case of trade unions the most important regulation would be one effectively preventing any union from debarring from its membership any competent and respectable workman who was willing to bear his fair share of the common expenses of the organization. Unreasonable apprenticeship regulations, arbitrary and unfair entrance examinations and exorbitant initiation fees—these and other obstacles to the free admission of com-

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petent men should be abolished. This done, there would be little opportunity left to the unions to build up a monopoly of labor force. In the case of the trusts the most important regulation would be one effectively assuring to all shippers fair and equal treatment on the part of the common carriers. It has been mainly through advantages in transportation that the few trusts that have attained to the position of successful monopolies have gained their ascendancy. If these advantages were completely taken away, the element of monopoly would be reduced in most cases to insignificant proportions. The next regulations applying to trade unions would need to be directed against the unfair and unlawful methods to which they too often resort in connection with strikes. It is desirable for the good of trade unions themselves that they be compelled to admit non-members freely to membership in the union, rather than impelled to resort to violence and intimidation, as is too often the case at present, in order to keep down their numbers and maintain a labor monopoly. To accomplish this end it would be necessary not only to have the organization run as an open union but to protect from violence and the fear of violence all workmen who for any reason preferred to remain independent of the union. Similarly the next regulations applying to trusts would be those designed to check unfair methods of competition. Once established in all parts of a country like the United States, a trust may maintain itself as a successful monopoly almost indefinitely if it is permitted to meet local competition by cutting local prices at will while upholding prices in non-competitive markets. Similarly other policies, such as forcing exclusive contracts upon retailers, which when practiced on a small scale may be passed over as phases of ordinary business competition, are magnified into serious evils when employed by monopolistic trusts. Regulations would need to be devised to put a stop to these practices, so that the independent producer would be protected against the effect of unfair discrimination on the part of his stronger rival as effectively as the scab would be protected against violence by the analogous regulations applying to trade unions.

If these regulations were effectively enforced, presumably

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through commissions resembling those already so generally established in the United States to control the railroads, the more serious evils to which trade unions and trusts may give rise would be checked. It might even then be true, however, as regards some trusts, if not as regards any trade unions, that a monopoly based on control of the supply of raw material or upon some other advantage would still be maintained. In such a case the final regulation that would have to be imposed would be that already applied to the railroads, that is, such regulation of the prices asked as would make them fair and reasonable. Few if any greater difficulties would be encountered in enforcing such a requirement through a "trust commission" than have been surmounted in enforcing the similar regulation applying to railroads through the Interstate Commerce Commission. Those who take a pessimistic view of the work of this commission and predict that the attempt at governmental regulation of railway rates must lead to disaster will find little consolation in this suggestion. For their benefit it may be insisted that governmental regulation of prices in trust-controlled industries is at most a remote contingency. The few trusts that would not be shorn of their monopolistic power by the other regulations advocated might be successfully attacked by a revision of the protective tariff. Certainly not until all protective duties beneficial to the monopolistic trusts had been abolished would any one seriously think of advocating a policy of price regulation. Though such a policy must be defended as a possible last resort by those who advocate the repeal of the anti-trust acts and the substitution of a system of trust regulation for the system of trust suppression, it is not one called for by the present situation. At some future time it may prove necessary to apply it to a few American industries, such as the anthracite coal industry, where the conditions are peculiarly favorable to monopoly. Before that time comes, however, it is not unreasonable to expect that there will have been such an improvement in the efficiency of the machinery for governmental regulation that tasks will be easy which would now be fraught with difficulty and even danger.[1]

[1] It is interesting that this policy of regulating the terms of sale should have been adopted by the states of Australasia in connection with trade unions before it should

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The conclusions to which our discussion has brought us seem to warrant the prominence given at the outset to the analogy between the trade union and the trust. Notwithstanding the very different treatment heretofore accorded these two forms of combination in the United States, they have been shown to have in common many strong and many weak points. To accompany a policy of encouragement towards unions with one of prohibition towards trusts, as we are now doing, seems quite indefensible. Both forms of combination should be given free play up to the point where they begin to conflict with the general interest. Beyond that point both should be so regulated and controlled that their evil tendencies, which have a common origin and many points of resemblance, may be effectively held in check. The accidental circumstance that in the United States trade unions are subject only to state regulation while trusts (probably) fall under federal control has no bearing on the economics of the problem. Economically the analogy between the two forms of combination has been followed to its conclusion in a plan of regulation and control, which is believed to be as sound practically is it is symmetrical in its general outlines.

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have been even thought of in connection with trusts. The motive leading to this step was, of course, the desire to protect the community from the losses and inconveniences accompanying strikes and lockouts, rather than to secure fairer wages; but since the court of arbitration was first established in New Zealand its task and those of courts modeled after it in the other states have expanded until now it is accepted as a matter of course that the conditions of employment in most occupations are to be regulated by judicial decree. This fact must always be borne in mind in connection with the preference of employment usually given to trade-unionists in the awards of these courts. The preference in question is accompanied by regulations which make the unions open to all applicants—any seven wage-earners may form a union which will be entitled to legal recognition—and by regulations which prevent unions from abusing their privileges, since they are not permitted to strike. It is not at all impossible that, after a few years' experience of regulated unionism, public opinion in the United States will come to view with favor the now condemned "closed shop."

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THE WORKINGMEN'S PARTY OF NEW YORK CITY: 1829–1831[1]

THE tradition that labor organizations, if they would avoid early and rapid disintegration, must stand aloof from all political movements—a tradition which today is losing its authority—seems to have originated, so far as this country is concerned, in the failure of the labor parties which flourished for a short time in Philadelphia, in New York City and elsewhere three-quarters of a century ago. The New York Workingmen's party was formed in 1829, rose quickly into prominence and disappeared in 1831. The Philadelphia party, born a year or two earlier, had an existence almost as brief.

The causes which brought these and other contemporary labor movements into being were everywhere substantially the same. City life and the steadily developing division of labor were modifying social conditions, exaggerating old evils, such as pauperism and intemperance and juvenile crime, and producing evils hitherto unknown. The factory and the contract system were replacing the domestic form of industrial organization. Class demarcation was becoming sharper, and the workingmen were in a state of dissatisfaction and unrest. Leaders only were needed to convert this unrest into organized remedial effort. The workingmen were firmly convinced that social and industrial conditions were awry; and every enthusiastic and persuasive would-be reformer was able to obtain a hearing and a following.

New York City affords the best ground for the study of the political activity of the workingmen of 1829 and 1830. There the political situation was more complex than elsewhere; and there leaders were readily found. The new and somewhat unique party passed in rapid succession through various phases corresponding quite closely to the type of men who temporarily dominated it and directed its policy: agrarianism, humanitarianism or educational communism, and fusion with various

[1] The writer wishes to acknowledge his indebtedness to Professors Ely and Commons of the University of Wisconsin for access to material collected under their supervision.

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political factions. At first, Thomas Skidmore, the agrarian, was in control. His plan of social reorganization was simple. The first step was equal division of property among the adult population. Thereafter, inheritance was to be abolished, and wills and gifts were to be legally prohibited. Equal division of the property of all who died in any given year was to be made among all those coming of age during the same year. The leadership of Skidmore was of short duration. In his place appeared a new set of leaders: Miss Frances Wright, the famous woman agitator; Robert Dale Owen, the son of Robert Owen of New Lanark fame; and George H. Evans, an Englishman and the editor of the newly established labor paper, *The Working Man's Advocate*. Now education—equal, practical, republican—became the slogan of the party. After the election of 1829, it became apparent to the leaders of the older parties that here was a new political power which must be conciliated and absorbed or split up and diverted into various channels. The methods employed were three in number: (1) dissensions were fomented within the new party; (2) skilled politicians affiliated themselves with it; and (3) the old parties endorsed certain policies and candidates of the workingmen.

At this time politics was already an art. Its methods indeed were cruder and more direct than those employed by the politicians of today. Violence was more common and bribery was more open. The hob-nail was more in favor than the gum-shoe. On the other hand, the rank and file were less experienced; they were more easily gulled by specious promises and plausible programs. Van Buren was "learning the ropes," and Tammany was an organized power. In 1830 a New York newspaper declared: "The Tammany grinding machine has turned out the following names, which all who hold offices or ever expect to get any, are ordered to vote as the Assembly ticket." [1]

The first step towards the formation of a workingmen's party party in New York City was taken at a meeting of "mechanics and others" held in that city on the evening of April 23, 1829. [2]

[1] *New York Spectator*, October 23, 1830. [2] *Morning Courier*, April 25, 1829.

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At that time, in New York City, many artisans were working only ten hours per day. The employers wished to lengthen the working day. At this meeting of workingmen and others, resolutions were adopted demanding the retention of the ten-hour day. At an adjourned meeting, held on April 28, a committee of fifty was appointed to report at a future meeting. Although it has been repeatedly asserted that the Workingmen's party originated as the result of a demand for a mechanics' lien law,[1] the facts do not appear to warrant such a conclusion. This committee of fifty did not make a report until October 19, 1829, nearly six months after it was appointed. Evidently the ten-hour question was satisfactorily arranged, because it is not mentioned in the report of the committee. At this meeting the first real leader was in control and his immediate successor was in evidence. Thomas Skidmore, a machinist, was chairman; and Robert Dale Owen was one of the secretaries.

The resolutions adopted condemned the private ownership of land, the hereditary transmission of wealth, banking privileges, chartered monopolies, auction sales and the exemption of church property from taxation, and favored a mechanics' lien law and the abolition of imprisonment for debt.[2] The preliminary portion of the report of the committee laid stress upon the desirability of a scheme of communal education. Under the leadership of Evans and Owen this became the chief plank in the platform of the party. The hand of Skidmore is seen in the resolution against private ownership in land and against inheritance of wealth.[3] Skidmore was an imperious person and in his parliamentary methods he was a forerunner of Thomas B. Reed. He railroaded through the meeting the long set of important resolutions, refusing to permit their discussion article by article. Robert Dale Owen declared that fair play was not allowed.[4]

Within two weeks after this meeting the first number of the *Working Man's Advocate* appeared. This paper was "edited by

[1] See Hammond, Political History of New York, II, 330; Jenkins, History of Political Parties in New York, I, 369.

[2] *Working Man's Advocate*, October 31, 1829, vol. i, no. 1.

[3] See Skidmore, Rights of Man to Property (1829).

[4] *Free Enquirer*, March 20, 1830.

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a mechanic," George H. Evans, and was published weekly. In the first two or three numbers the following motto appeared immediately below the title: "All children are entitled to equal education; all adults, to equal property; and all mankind to equal privileges." The first sentiment is that of R. D. Owens; the second that of Skidmore.[1] In the prospectus the editor stated the aims and purposes of this famous early labor journal:

> We shall oppose the establishment of all exclusive privileges, all monopolies, and all exemptions of one class more than another from an equal share of the burdens of society; all of which, to whatever class or order of men they are extended, we consider highly anti-republican, oppressive and unjust. We consider it an exclusive privilege for one portion of the community to have the means of education in colleges, while another is restricted to common schools, or, perhaps, by extreme poverty, even deprived of the limited education to be acquired in those establishments. Our voice, therefore, shall be raised in favor of a system of education which shall be open to *all*, as in a real republic it should be.[2]

In the fall election of 1829 the new party nominated a full list of candidates for the Assembly. Its nominees were *bona fide* workingmen: two machinists, two carpenters, a brassfounder, a whitesmith, a cooper, a painter, a printer, a grocer and a physician.[3] Of the eleven assemblymen Tammany elected eight; the National Republicans two; and the Workingmen one—Ebenezer Ford. Alexander Ming, Sr., and Thomas Skidmore, radical agrarians, were on the ticket with Ford and received nearly as many votes. The vote cast for the three men was as follows: Ford, 6166; Skidmore, 6143; Ming, 6140.[4] The new party had also named candidates for the Senate, but these were defeated.

Skidmore's extreme views as to the equalization of property could not long be countenanced. After the election of November, 1829, the workingmen

[1] It is noteworthy that in the fourth number, November 21, 1829, the motto was changed to read: "All children are entitled to equal education; all adults to equal privileges." Skidmore's influence was already diminishing.

[2] *Working Man's Advocate*, October 31, 1829. [3] *Ibid.* October 31, 1829.

[4] *New York Spectator*, November 13, 1829.

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began more clearly to distinguish the errors into which they had been drawn; first, in countenancing crude and impractical propositions, such as a proposal to divide property among the adults of the present generation, and then by running a ticket which was in itself objectionable. They called to mind, too, Thomas Skidmore's management, and his somewhat overbearing and dictatorial manner throughout the whole proceeding; and the remembrance did not operate favorably to his views or to his popularity.[1]

The first split in the party was on the subject of agrarianism. Only a handful adhered to the policies of Skidmore. Humanitarian enthusiasm was now dominant. Robert Dale Owen became the nominal leader of the party, but its inspiration was furnished by a woman, Frances Wright. In the language of to-day Miss Wright would be described as a "new woman;" and it may be claimed for her that, with the possible exception of Mary Wollstonecraft, she was the first of the new women.

Equal republican education was heralded by Frances Wright, Robert Dale Owen and George H. Evans as the panacea for all the social and economic ills which then afflicted the American people. This was, for them, the one important plank in their political platform. In comparison with the communal form of education, equal division of property and the abolition of inheritance were matters of secondary importance.

The next important meeting of "mechanics and other workingmen" was held December 29, 1829. At this meeting a long preamble and a formidable set of resolutions were adopted as the basis for the future policy of the party. The chairman was Henry G. Guyon. Skidmore was not allowed to speak; when he attempted to address the meeting, he was howled down. Agrarianism was discredited; and communal education was placed in the saddle. The preamble asked for the communal school system. It declared that the then existing day-school system led to class differentiation and to the destruction of political liberty. The formal resolutions upon this topic were, however, more conservative; and in view of what occurred a few months later, this difference is of considerable importance.

[1] Robert Dale Owen, *Free Enquirer*, March 20, 1830.

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Resolved: That, next to life and liberty, we consider education the greatest blessing bestowed upon mankind.

Resolved: That the public funds should be appropriated (to a reasonable extent) to the purpose of education, upon a regular system, that shall ensure the opportunity, to every individual, of obtaining a competent education before he shall have arrived at the age of maturity.[1]

Soon after this meeting Thomas Skidmore and "a few of his friends" called a second meeting "for those and those only who lived by the labor of their hands." According to Owen, "no business was done." But Skidmore was persistent; and on February 23, 1830, another meeting of the agrarian branch of the party was called, and an organization was effected. Owen estimated that "about forty individuals" attended this meeting. Skidmore and George H. Evans engaged in a long controversy over the situation. Skidmore asserted that the workingmen had allowed rich men to come among them, while Evans declared that Skidmore had made himself "obnoxious to the great body of workingmen."

The new leaders of the party devoted themselves to the propaganda of equal, republican education. All children were to be fed, clothed and lodged at public expense; all were to dress alike and eat at a common table. Give such a training, said Owen, to a boy until he is twenty-one, and division of property is not important. It was an idealistic and Platonic scheme; but enthusiasm and idealistic dreams cannot long support and maintain a political party. The unexpected strength of the workingmen's movement, as disclosed by the November election, aroused the Tammany leaders. The opposition party was in a disorganized and shattered condition. Many designing politicians saw a golden opportunity to manipulate the Workingmen's party for their own private and selfish ends.[2] The *Daily Sentinel* warned the workingmen. "Trust not too implicitly to sudden friendships. Beware of monied and professional influence."[3]

[1] *Working Man's Advocate*, January 16, 1830.

[2] *Morning Courier and New York Enquirer*, October 9, 1830.

[3] *Working Man's Advocate*, March 13, 1830.

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Education was the issue on which a second division appeared within the party. On May 19, 1830, the general executive committee of the party held a meeting, forty out of a total of seventy members attending. The sub-committee on education offered a report which declared that they were

> determined to support, without deviating to the right hand or to the left, the sentiments adopted by the workingmen on the 29th of December last. While they are unchangeably in favor of granting to all men the free enjoyment of their own private opinions on all subjects of this nature, they are solemnly resolved, never to support any attempt to palm upon any man, or set of men, the peculiar doctrines of infidelity, agrarianism or sectarian principles . . . While your Committee do not wish to induce any person to join our cause by the tempting doctrines of an equal division of property, and of boarding and clothing all children in the land, they strenuously contend for a republican system of education, but upon a plan that shall leave to the father and the affectionate mother the enjoyment of the society of their offspring.[1]

Twenty-five members voted for this report and fifteen against it. Henry G. Guyon, the chairman of the sub-committee, was, it will be recalled, the presiding officer at the "great meeting" of December 29, 1829.

This report was a diplomatic one. It put Evans and Owen in an uncomfortable position by ignoring the clear line of demarcation between them and the followers of Skidmore and Ming; and it dealt a severe blow at their policy by picturing the communal or boarding-school scheme of education as inimical to the American home. Evans declared this report to be the work of "a few unprincipled politicians," and stoutly maintained that the rank and file of the party were in favor of the boarding-school method of education. It was charged by the Owen-Evans faction that this committee awaited a favorable opportunity to present the above report; in short, that political chicanery was used. Both sides urged that they represented the views of the party as outlined by the general meeting of December 29, 1829. Such divergent claims were made plausible because, as pointed out above, the preamble adopted at that

[1] *Working Man's Advocate*, May 29, 1830.

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meeting was much more radical on the subject of education than the formal resolutions.

At this committee meeting there was also presented a minority report, which was inspired by Owen and Evans and which read, in part, as follows:

> Your Committee propose, therefore, a System of Public Education, which shall provide for all children, at all times, receiving them at the earliest age their parents choose to entrust them to the national care; feeding, clothing and educating them to the age of maturity. Your Committee propose that all the children so adopted, should receive the same food; should be dressed in the same simple clothing; should experience the same kind treatment; should be taught (until their professional education commences) the same branches; in a word, that nothing savoring of inequality, nothing reminding them of the pride of riches, or the contempt of poverty, should be suffered to enter these republican safeguards of a young nation of equals . . . Your Committee propose that the food should be of the simplest kind, . . . that the dress should be plain, convenient, economical, uniform . . . Your Committee do not propose that any one should be compelled to send a child to these public schools, if he or she saw fit to have them educated elsewhere. But we propose that the tax should be paid by all parents, whether they send their children or not.[1]

On May 26 another meeting was called. The friends of Owen and Evans were in control, and opposing members were put out. Resolutions were adopted in harmony with the minority report outlined above; and the acts of the majority at the preceding meeting were denounced.

The members of the Owen-Evans wing of the party attributed the political storm to the efforts of designing politicians, and subsequent events tended to substantiate their assertion. "The leaders of the Adams and Clay party foresaw the future greatness and influence of the workingmen, and sought to turn it to their own advantage," wrote one correspondent.[3] About three

[1] *Working Man's Advocate*, May 29, 1830. The report occupies three columns of fine print.

[2] *Ibid.*

[3] Over the signature "Montgomery." *Ibid.* June 14, 1830.

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weeks after the split in the party Evans wrote an editorial upon the causes of this unfortunate occurrence.

Some attributed all the fuss to jealousy; some to our opponents' fear that an honest avowal of our political principles, especially on the subject of Public Education, would lose us some votes in the autumn; and others to a deliberate plan to employ the working men as tools to build up a Church and State party. More or less of truth there doubtless is in all of these suggestions; but we do not think that any one, or all of them are sufficient to explain the deliberate plot that has been lately unmasked. We have weighed, with what care and impartiality we could, all the evidence that has come before us; we have watched the tricks and manœuvres of these seceders from the principles of the working men; and we are fully convinced that their plan is an organized one, and that it has for its sole object *the election of Henry Clay as our next President.*[1]

In July, 1830 an election for alderman was held in the fifth ward. This afforded the first concrete illustration of the trend of the larger wing of the Workingmen's party toward a coalition with the Anti-Masonic and National Republican parties. The result of this election was as follows: Anthony Lamb ("Coalition,") 717 votes; Myndert Van Schaick (Tammany), 617; and William Leavens (Workingman, Owen-Evans wing), 445. Different analyses of the "coalition" are not in agreement. Evans considered Mr. Lamb to be "the candidate of a coalition of the Old Federal party, the Anti-Masonic party, and the disaffected of the Tammany party"; but he added that perhaps one hundred workingmen were deceived and voted for him.[2] "The Adams and Clay papers consider it (the election of Lamb) a triumph, the Federals, under various names, are rejoiced and the Anti-Masons are loud in their exultation." The *Mechanics' Press* of Utica spoke of Mr. Lamb as the "candidate of our friends"; and *The Evening Journal* called him the candidate of the "Republican Workingmen."[3]

For the fall campaign of 1830 in New York City, four tickets were placed in the field: Tammany, "Clay Workingmen," Workingmen (Owen-Evans wing) and Agrarian (Skidmore

[1] *Working Man's Advocate*, June 12, 1830.
[2] *Ibid.* July 17, 1830.
[3] *Ibid.* July 24, 1830.

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branch of the Workingmen.) There were also four state tickets in the field: Democratic, National Republican or Anti-Masonic, Workingmen (Owen-Evans wing) and Agrarian. In New York City, the National Republicans accepted the Clay Workingmen's candidates for Congress and for the state legislature; and the latter nominated no candidates for governor or for lieutenant-governor. Granger and Stevens were the National Republican candidates for these offices. The National Republicans made an earnest endeavor to capture the vote of the workingmen. The "Clay" wing was captured; but the Owen-Evans wing refused to swallow the bait so invitingly dangled before them. Seward gives conclusive evidence on this point. In order to secure the coöperation of the workingmen in the eastern part of the state "it seemed necessary," he wrote, "to name a candidate for lieutenant-governor who resided in the city of New York, was identified with the workingmen, and free from the reproach of previous connection with the Anti-Masonic party."[1] The plan was to capture the Anti-Masonic vote in the western portion of the state and also the workingmen's vote in the cities of the eastern portion. Anti-Masonry never obtained a firm foothold in the eastern portion of the state: the highest number of votes cast for the Anti-Masonic ticket of 1829, in New York City, was only 341. The nomination of Stevens accomplished little, as Queens County was the only eastern county carried by this ticket.[2] Seward, however, was elected as state senator by means of the combined votes of the Workingmen and the Anti-Masons.[3]

The following quotation from a newspaper which supported the candidacy of Granger and Stevens is interesting, because it throws a side light upon the political methods of the period, and also because it indicates the existence of sympathetic relations between Tammany and the Owen-Evans wing of the Workingmen's party. Referring to a meeting held on October 30, 1830, the *Spectator* says:

[1] W. H. Seward, Autobiography, I, 78.

[2] Charles McCarthy, "The Anti-Masonic Party," Report of American Historical Association, 1902, p. 404.

[3] W. H. Seward, Autobiography, I, 80.

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It is not to be denied, though we are ashamed of poor human nature to be obliged to record the fact, that the efforts of the two scrub morning papers, and the Fanny Wright paper called the *Sentinel*, to produce such a disturbance as might end in a riot, were so far successful as to interrupt the proceedings of the meeting . . . It was early perceived that a gang of desperadoes, in the pay of Tammany Hall to disturb every decent public meeting in the city, were scattered sparsely over the room.[1]

A few days later the same newspaper speaks of "the coalition between the Tammany men and the Fanny Wright men."[2]

The "Clay Workingmen" were "composed of a medley of admirers of Clay, the owners of stock in various great manufacturing establishments, workingmen who believed in a protective tariff, Whigs, and a bunch of hack politicians who had taken up the Workingmen's movement for selfish ends."[3] Of the ten men nominated by this aggregation for the Assembly, two were members of the band of twenty-five who, in May, had voted against the Owen-Evans educational program, and three others were on the National Republican ticket of 1829 as candidates for the Assembly.

The Owen-Evans wing—a "fragment of the Workingmen's party of the year before, standing absolutely for their principles and containing no suspicious politicians or monopolists"[4]—nominated a complete local ticket. Among the candidates for Assembly were Ebenezer Ford, the successful candidate of the preceding year, and P. C. M. Andrews and Paul Grout, members of the minority of the general executive committee at the time of the rupture in May, 1830. This branch of the party also placed a state ticket in the field; General Root was nominated for governor, but he afterwards withdrew, and the name of Ezekiel Williams was substituted. The convention issued a statement declaring that they were not "levelers or disorganizers" but sought "to raise all by the mild and efficient aid of Public Education." Approval was given to "a gradual, search-

[1] *New York Spectator*, November 3, 1830. [2] *Ibid.* November 6, 1830.

[3] Myers, History of Tammany Hall, pp. 97, 98; also, Hammond, Political History of New York, II, 30, 31. [4] Myers, *op. cit.* pp. 97, 98.

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ing, thorough reformation of the body politic; a reformation that shall purge it of its aristocracy, its corruption, and its expensive, unrepublican excrescences."[1] The platform adopted by the convention favored equal universal education, abolition of imprisonment for debt, abolition of all licensed monopolies, an entire revision or abolition of the militia system, a less expensive legal system, equal taxation on property, an effective mechanics' lien law, the district system of elections, and no legislation as to religion.

The Agrarian party, which called itself the "Original Workingmen's Party," also nominated a complete state and city ticket. A Mr. Burt of Orange County was its candidate for governor, but he declined the honor, and no one seems to have been named in his stead. Thomas Skidmore and Alexander Ming, Sr., were both on the ticket: the former was nominated for Congress, the latter for the Assembly.[2]

The Democratic party, which had nominated Throop for governor, won a complete victory in the state, and Tammany elected its entire city ticket. The vote of the entire state for governor was: Throop, 128,892; Granger, 120,361; Williams, 2332. The vote in New York City was; Throop, 10,654; Granger, 7838; Williams, 1959. The Tammany candidates for the Assembly received votes ranging from 17,765 to 9647; the candidates on the "Clay Workingmen's" ticket, 7836 to 5937. Ebenezer Ford received 2329 votes—the highest number cast for any one of the Owen-Evans candidates. In 1829 he had received over 6000 votes. Alexander Ming, Sr., received 148 votes.[3] Practically the entire strength of the Owen-Evans wing was concentrated in the city of New York; Williams received only 373 votes outside of the city. It has been estimated that about 3800 workingmen went back into the Tammany fold because of its advocacy of a mechanics' lien law.[4]

This election marks the end of the Workingmen's party. There are traces of its existence in 1831, but after that even its

[1] *Working Man's Advocate*, September 18, 1830.

[2] *Morning Courier and New York Enquirer*, October 26, 1830.

[3] *New York Spectator*, November 13, 1830.

[4] Myers, *op. cit.* p. 99.

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fragments drop out of sight.[1] In the spring of 1831, at a meeting of the National Republicans of the eighth ward, a committee reported that

> There are now, besides the National Republican party, two well organized parties in the ward—the party of Mechanics and Workingmen and the Tammany party. The avowed object of the Workingmen's party is, to produce a reform in our city government, and to insure its administration upon just and economical principles, without favoritism, and without extravagance.[2]

The ticket nominated by the Workingmen was endorsed. But the real issue in the city was "caucus" and "anti-caucus." All opponents of Tammany seem to have been "anti-caucus," and Tammany met a defeat.[3] The original issues for which the Workingmen's party had stood were lost sight of.

In the fall of 1831 Tammany swept the city. Its opponents were split into five fragments.[4] Little interest was manifested, and a very light vote was polled. "That only about half the number of voters have come to the polls is admitted; that the Tammany party have been organized and active is well known; that their opponents have been split into factions, acting without concert or prospect of success, is known."[5]

In the development of the Workingmen's party we can clearly discern the potent influence of the narrow, enthusiastic or fanatical leader. Utilizing the discontent of his followers, he leads them into new and unanticipated paths. Although formally committed to agrarianism, in October, 1829, it cannot be assumed that the rank and file of the party really favored such a radical program; because, a few months later, Skidmore, their first leader, was able to control only a small fragment of his former following. It is equally inadmissible to assume that in 1830 the workingmen were generally favorable to a scheme of communistic education; yet this was the most prominent and vital

[1] Some of these fragments reappeared about five years later in the Loco-Foco or Equal Rights party—a movement which began inside Tammany. *Ibid.* pp. 111, 112. Also E. V. Blake, History of the Tammany Society, ch. xx.

[2] *New York American*, April 8, 1831.

[3] *Ibid.* April 19, 1831.

[4] *Ibid.* November 11, 1831.

[5] *Ibid.* November 10, 1831.

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plank in the party platform at the height of its power. After the second split, Owen and his friends could only carry with them about 2000 voters. The workingmen were controlled, as the mass of a party is always controlled, not by reflection but by emotion. They believed themselves oppressed and wronged. They had been told, time after time and year after year, that education made for equality and for good citizenship. Robert Dale Owen presented a perfectly simple and tangible program, and for a time he carried the entire party with him.

The strongest weapon wielded by his opponents was the reiterated declaration that Owen's educational system struck a blow at the American home. The picture of the home, with the children at evening gathered around the hearthstone, was fatal to his program. Moreover, his former relations with Skidmore and his association with Frances Wright and the *Free Enquirer* militated against him: he was denounced as an enemy, not only of the American home but also of property and of religion. Later in life Owen recognized that his youthful enthusiasm had led him too far:

> Looking back on those days (1825–1831), I feel assured that if fate had thrown Mary Shelley and myself together at that period of my life, instead of bringing me in contact with Frances Wright, the influence would have been much more salutary. I required to be restrained, not urged; needed not the spur but the guiding rein.[1]

The selection of equal educational opportunities as the chief demand of the Workingmen was neither unnatural nor politically unwise. There was at the time a general belief that universal education would cure all social evils. It would develop good citizens, empty jails and almshouses, preserve democratic institutions and increase production. But the American ideal was the day school, free to all scholars. Owen's ideal was a different one: it was derived from Fellenberg's school at Hofwyl, Switzerland, where he had been a student. This was a boarding school, very similar in its methods to the well-known George Junior Republic of our own time, at Freeville, New

[1] Robert Dale Owen, Autobiography, p. 323.

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York. In Fellenberg's school all students were placed upon the same social plane; and the institution was, for some years, nominally self-governing.[1] The radical difference between the two ideals of education, aided by the efforts of politicians and by the introduction of new elements, brought about the split which crippled the party and led directly to its dissolution. The bitterness of the attack upon the party may be pictured when it is recalled that the members were denounced as agrarians, infidels, atheists, "the dregs of the earth, the very slime and scum of society."

In conclusion we may profitably inquire: What were the concrete results of the activity of this loose and ephemeral political organization? The chief effects may be summed up as follows:

(1) The passage of a mechanics' lien law by the New York legislature. It was clearly for the purpose of placating the workingmen that this measure was supported and pushed through by Tammany.

(2) The abolition of imprisonment for debt, by a law passed in the spring of 1831. The stand taken by the Workingmen's party clearly hastened legislative action in this matter.

(3) The appropriations for educational purposes in New York City increased very visibly at this time.[2]

(4) When, in 1833–37, the strong trade-union movement arose, the fate of the Workingmen's party was accepted as a conclusive argument against direct political effort. Hence the trade unions kept aloof from party politics and merely questioned candidates as to their position on measures which were regarded as affecting the interests of labor.

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[1] See article by the writer in *The Schoolmaster* (Saginaw, Michigan), March, 1907.

[2] Bourne, History of the Public School Society, p. xxxii.

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THE SLAVE LABOR PROBLEM IN THE CHARLESTON DISTRICT[1]

THE essential features and tendencies of a régime can best be analyzed in those instances in which it has been most fully developed and most persistently maintained. Isolated phases of American negro slavery may be studied with some success in many places and periods, but its complex working and far-reaching effects can perhaps be learned with relative completeness only from a study of some long settled and very black portion of the Southern black belts. The best example for our purpose is the low-lying coast region of South Carolina and Georgia, which had its focus at Charleston and may well be called the Charleston district. There as elsewhere the establishment of slavery was due entirely to the desire for a labor supply, and its patent effects were chiefly of an economic sort; but the system had also deep and inevitable influences and effects of a social character, and of course developed conspicuous outcroppings in national politics. For all these things the material which can be found for the Charleston district is eloquent.

The physical features of the district, so different from most other parts of North America, invited the early introduction of the plantation system, with negro labor. The heat, dampness and malaria retarded the growth of the white population and promoted the relative increase of the negroes. The development of rice, indigo and sea-island cotton as staples caused the firm establishment of plantations to utilize the fertile alluvial soil of the lowlands. The splendid harbor and the tongue of elevated and healthful land at Charleston caused the growth there of a genuine capital of the district. The régime thus promoted by the unchanging conditions of nature waxed strong and endured for generations, with far less change than is usual

[1] The research of which this article is a product has been materially aided by the American Bureau of Industrial Research and the Carnegie Institution of Washington.

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in American life. Lowland South Carolina began its successful career as a colony in the wilderness, producing staples by the use of negro labor under white control on plantations, with its center and soul at Charleston. Thus it stands to-day, decadent it is true, but not revolutionized. It stands thus far, indeed, as a monument to the power of soil and climate in shaping and preserving systems of human activity, and to the effectiveness of race distinctions in resisting even cataclysmal attempts at alteration.

The colony was founded in 1670, by settlers who came to seek their fortune. At first they had no staple industry. They labored to produce most of the things they needed, and exported only a small value in naval stores and peltry with which to buy a few European goods. About 1693 came the discovery of rice as a staple for export, and this gave an incentive for procuring a large labor supply and organizing it on the most effective system feasible. Negroes were found to be especially adapted to the climate, and the plantation system was borrowed from the West Indies, where it already flourished. A régime of plantation industrialism was instituted which was strong enough to dominate the situation. The Lords Proprietors, with their attempts at feudalism and arbitrary extraneous control, were brushed away; they were replaced after 1729 by a royal government, which was welcomed because it permitted a very large degree of self-government. The citizens worked out their own destiny, following the line of least resistance, which of course might or might not be the line of greatest permanent efficiency. There arose, then, a peculiar system of industry, commerce and social life as the resultant of physiographic and ethnic influences. Its general features are too familiar to require description here. An important fact was the coördinate growth of the plantations to produce the staples and of the city of Charleston for commerce and incidental industry.

Indigo and long-staple cotton, as well as rice, were successively found to be producible with profit in the Carolina lowlands. The great demand of the world for these staples caused the growth of a strong local demand for labor, and especially for negroes, who were known to be largely immune to malaria

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and unoppressed by the heat. Negro labor, of necessity unfree, furnished the chief supply in both country and city. Plantations were established wherever fertile land could be found in reach of navigation. These were scattered throughout the lowlands, mostly in isolation from one another, but all tending to have the same general features. It was found by experience that the best results in rice and indigo production were obtained from plantations with working forces of about thirty hands each, and the tendency was toward that size in the industrial unit.[1] The spread of a system like this, distributing one white family to every isolated group of from five to twenty or more negro families, in a malarial region, resulted in a situation not fully duplicated elsewhere on the continent. The Africans were too numerous in the early stages for the whites to succeed nearly so well as did the Virginians and the men of the upland cotton belt in taming them to the ways of civilization. The field work was always done in the crudest manner; and the necessity of the master's moving away from his estate in the warm months, to escape the malaria, involved the adoption of some system of routine which would work with more or less automatic regularity without his own inspiring or impelling presence. Hence the system of "tasks," by which the white overseer or negro foreman (called a "driver") assigned a stated measure of land to be worked over by each laborer each day, varying in amount according to the laborer's classification as an able-bodied, prime or "full hand," a three-quarter hand, a half-hand, *etc.* When special work had to be done, like clearing land of its timber, the negroes might be worked in gangs under the master's direction; but as a rule the task system was followed, as being more nearly automatic and requiring less active and vigilant supervision. Aside from field labor, there was need of such work as cooperage, blacksmithing, boating and domestic service, to which chosen negroes were assigned. In general it was recognized as useless to expect a high degree of efficiency in any branch of plantation labor or service and there was a general contentment with moderate efficiency on the part of the negroes and moderate

[1] *Cf.* B. R. Carrol, Historical Collections of South Carolina, II, 202, and American Historical Association Report for 1903, I, 445.

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profits from their unstrenuous labor. Zeal and growth in skill were encouraged; but, in view of the great numerical preponderance of the negroes, to keep them docile was considered more important than to increase their labor-value.

In the first stage of plantation and city development, the unskilled labor supply was made up almost wholly of negro slaves, while the whites filled all other ranks, acting as artisans, foremen, farmers, planters, merchants, *etc.* A few of the whites were indentured servants, and a few white freemen were unskilled laborers, but only a few in either case, and the number was diminishing. It is safe to say that from about 1700 to 1720 there was fairly complete identity of racial, industrial and legal classes; the negroes were unskilled laborers and of slave status; the whites were skilled laborers and managers, and were freemen. The negroes were employed in routine work, the whites filled all the versatile and responsible occupations. There was well-nigh complete subordination of negroes to whites in every respect. Under this arrangement the economic and social needs, as the whites saw them, were harmonious.

But this simple relation could not long endure. Some of the negroes proved relatively intelligent, acquired moderate skill in handicrafts or proved their capacity for self-direction on a small scale in industry and commerce. These became foremen, boat captains (patroons), peddlers, custom blacksmiths, *etc.* The emergence of mulattoes, with far greater intelligence, hastened this development. Masters owning the labor of relatively high-grade workmen were naturally disposed to employ that labor to the best advantage—to encourage progress of their slaves in skill and thus to save themselves the expense of employing freemen for skilled tasks. The next step, following naturally, was for masters to secure instruction for their most capable youths through apprenticeship, and to set up some of the skilled slaves as craftsmen with shops for public patronage. The city, with its more rapidly growing complexity and specialization of industry, was of course the seat of the earliest and the fullest instances of this development.

The increasing competition of negro slave artisans with the whites was of the greatest importance as regarded the relations

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of the races, because the colony depended mainly upon the outside world for its supply of manufactures and the opportunities for craftsmen in the province were at the best very limited. Competition by the slaves tended to drive out a considerable proportion of the white freemen whose skilled labor would otherwise have been needed. Conditions were gradually becoming more complex: racial, legal and industrial classes were ceasing to be so nearly coterminous as in the earlier time. A number of negroes and mulattoes, indeed, were gradually coming to acquire legal status as freemen, exempt from slavery regulations, but in no wise recognized by the whites as their equals. The presence of these freedmen, of course, still further complicated the situation. The demand for labor was constantly growing, but mainly for unskilled labor. It was chiefly met by the slave trade and the natural increase of the negro population. Skilled trades were entered more and more largely by exceptional negroes and mulattoes. In times of depression, white mechanics were tempted to emigrate in search of better openings; but the persons of color, if slaves, could not migrate, and if legally free, had to stay in most cases because of the dearth of industrial opportunity for them in other quarters of America. Thus the proportion of negroes increased in the trades as well as in the total population, city and country. This state of things aroused considerable apprehension.[1]

[1] An act of the Assembly, adopted as early as 1714, declared that "the number of negroes do extremely increase in this Province, and through the afflicting providence of God, the whites do not proportionably multiply, by reason whereof, the safety of the said province is greatly endangered." Cooper and McCord, Statutes at Large of S. C., VII, 367. The attitude of the public toward the labor and race problem in general is shown in the preamble to an act of 1712, "for the better ordering and governing of negroes and slaves." The preamble runs as follows: "Whereas, the plantations and estates of this Province cannot be well and sufficiently managed and brought into use without the labor and service of negroes and other slaves, and forasmuch as the said negroes and other slaves brought unto the people of this Province for that purpose, are of barbarous, wild, savage natures, and such as renders them wholly unqualified to be governed by the laws, customs and practices of this Province; but that it is absolutely necessary that such other constitutious, laws and orders, should in this Province be made and enacted, for the good regulating and ordering of them, as may restrain the disorders, rapines and inhumanity to which they are naturally prone and inclined; and may also tend to the safety and security of the people of this Province and their estates; . . . Be it therefore enacted," *etc.* *Ibid.* p. 352.

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ELECTRONIC REPRODUCTION PROHIBITED

The importation of negroes into America had been due, of course, to the economic motive of procuring a labor supply. The regulations of slavery had been instituted for their industrial control—to permit their "breaking in," their subjection to the rules of civilized labor. With the negroes once on hand in large numbers, however, the enormous contrast between them and the whites in intelligence, standards and institutions—in a word, in race character—brought up a social problem which overshadowed all economic issues. Slavery, originating as a system of labor control, was maintained as still more valuable in safeguarding the standards, institutions and social well-being of the few whites against possible demoralization and overthrow by the numerous blacks. The negroes were required by the system to abandon gradually the habits and points of view acquired in the African jungle, to accept and acquire as far as they could the ideas of the civilization into which they had been brought and to abide by its rules of social conduct. Plantations and slavery made up a system of tutelage and police combined, providing education in civilized industry and life and at the same time preventing successful outbreaks of negro revolt against white control.

The system showed its kindly or its harsh features, other things being equal, according as the negroes in a given case were relatively docile or fractious. Other things were not always equal: in some cases the mingling of the races in daily life was free and abundant, so that the negroes had ample opportunity to use their imitative faculties and to acquire the white men's ways; in other cases the negroes were isolated, their masters absent for long periods, white neighbors few and models for imitation not within reach. Under conditions of the latter sort, subjection in full would be required of the negroes, little affection would be inspired, and little loyalty would be engendered to the system or to the society which it safeguarded.

The Carolina lowland plantations presented the less attractive of these sets of conditions. The acceptance of the situation was slow among the negroes, and their adaptation to it was imperfect. Strict police control was necessary. This firm regulation, in turn, making against the intimate personal associ-

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ations common in Virginia and the uplands, tended to preserve the race alienation which had called it into being. The negroes of the South Carolina coast failed to acquire the English language in intelligible form; they clung to voodooism and other things African; and, in spite of their apparent and even oppressive sociability and friendliness, they remained largely foreign in spirit and in custom and subjects of mystery to their masters. The conditions in the Charleston district were always far more similar to those in the West Indies than to those in Virginia and the upland cotton belt.

Most of the South Carolina coast negroes were unambitious; but some few, as we have seen, and especially the mulattoes, were eager to learn and with their masters' aid became artisans or otherwise largely self-directing in industry. The situation grew complex and in some ways embarrassing. In the divergence of economic interests and social needs it became increasingly clear that the social needs were paramount. In frequent instances the financial interest of the master lay in giving his capable slaves as much industrial freedom as they could use; but it was a social necessity to keep under complete control every black who could possibly incite or take part in a servile insurrection or otherwise promote disorder. The situation was delicate, as all men knew; and the only sure safeguards against the outbreak of rapine and anarchy lay in watchfulness and masterfulness on the part of the whites.

It was recited in a legislative act as early as 1712 that

> several owners of slaves [are] used to suffer their said slaves to do what and go whither they will and work where they please, upon condition that their said slaves do bring their aforesaid masters so much money as between the said master and slave is agreed upon, for every day the said slave shall be so permitted to employ himself, which practice hath been observed to occasion such slaves to spend their time aforesaid, in looking for opportunities to steal, in order to raise money to pay their masters, as well as to maintain themselves, and other slaves their companions, in drunkenness and other evil courses.[1]

The competitive phase of the race-labor problem was touched

[1] Cooper and McCord, Statutes at Large, VII, 363.

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ELECTRONIC REPRODUCTION PROHIBITED

upon by the grand jury of the province in its presentments in 1742: "We present as a grievance the want of a law to prevent the hiring out of negro tradesmen, to the great discouragement of the white workmen coming into this province."[1]

There thus appeared two interests favoring the restriction of negro opportunity. The white laboring men wanted to keep the slaves out of the skilled trades as far as possible, and to that end opposed their being hired out under any circumstances for artisan's work. The men of the governing class opposed any broadening of negroes' range of personal freedom as increasing the danger of demoralization and revolt. The white artisans, it seems, had not enough political strength to get their will enacted into law[2]; and the statutes prohibiting the hiring of their time by slaves were not sufficiently supported by public opinion to secure their enforcement. Like most other provisions of the slave code, this rule was generally disregarded when the interest or inclination of master and slave agreed in favor of its violation. In many cases the law, if enforced, would have seriously hampered industry and commerce. In the city, for example, stevedores, boat hands, messengers, carpenters and day laborers in general were often needed for immediate service; and the employer could not submit to the delay and formality of seeking out and making contracts with the owners of the slaves whose labor he desired. For the sake of a flexible labor supply, some device like that of slaves hiring their own time was essential; and that being the case, the laws prohibiting this arrangement could not, of course, secure general observance. In quiet times, indeed, the citizens fell generally into easy-going practices, each following his own interest in managing his slaves (or letting them manage him) and thinking little of the provisions for public control. The discovery of negro conspiracies

[1] Presentments of October 20, 1742, published in the *South Carolina Gazette*, November 8, 1742.

[2] An exception to this is noted by Sir Charles Lyell, A Second Visit to the United States (N. Y., 1849), vol. ii, pp. 78 to 83, in the case of a Georgia enactment of 1845, prohibiting the competition of negroes as building contractors. Lyell gives a clear view of the conditions and the tendency which accompanied such legislation.

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in 1720[1] and 1740[2] spread alarm in the province and for the time stimulated public sentiment in favor of efficient police and other safeguards; but relaxation of control was not long in following each spasm of police reform.

From about 1740 to the outbreak of the war for American independence was the heyday of prosperity for the Carolina lowlands. Rice and indigo prices were excellent; the laboring force was rapidly enlarged, the cultivated area was extended and the exports and imports increased. Merchants from many countries gathered at "Charles Town"; and many, acquiring wealth, adopted the Carolina standard of highest gentility and retired from commerce to enter planting careers. The city was beautified with handsome public buildings and private residences; the plantations were equipped with commodious mansions and substantial rice mills, smoke-houses, negro quarters, *etc.*, many of which endure in more or less dilapidation to the present day. Carolina merchants and planters were in close touch through newspapers and correspondence with the whole world of commerce and affairs. Carolina youths were often educated in the colleges of Old England. Planters of a fine type of manhood, culture and ability set a high standard in the commonwealth; and sons strove to fall nothing short of their fathers' attainments. In consequence, there was efficiency and thorough honesty in government; honor, candor and cordiality in private relations; and kindly consideration, as a very general rule, toward all persons not obviously undeserving. The native slaves were encouraged to progress as far as circum-

[1] Among the transcripts in the capitol at Columbia, S. C., from the British Public Record Office (B. P. R. O., S. C., B. T. 1, A2) is an official letter of 1720 from Charleston, unsigned, to Mr. Boone at London. It relates that a barbarous plot among the negroes has lately been discovered, by which they purposed to take the town in full body. Some of the negroes have been burnt, some banished. The leaders were slaves of Mr. Percival, who was absent in England. Percival is advised through Boone to sell his negroes singly or else to provide strict management for them, for otherwise "they will come to little profit."

[2] The revolt of 1740 is briefly described in an act of immunity which followed it. Cooper and McCord, Statutes at Large, VII, 416. Other conspiracies are listed and described in an anonymous pamphlet entitled, A Refutation of the Calumnies circulated against the Southern and Western States, respecting . . . Slavery. By a South Carolinian. (Charleston, 1820; 88 pp.).

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ELECTRONIC REPRODUCTION PROHIBITED

stances could be made to permit; the imported Africans were broken into service as mildly as possible; all were well fed, adequately clothed and sheltered, and subjected to as a mild a discipline as was compatible with public safety. On the whole, the province was as well-ordered, prosperous and happy in all its elements as could well be with such diverse racial components and so large a latent possibility for disorder and social revolution.

There were a few blemishes on the generally smooth surface of prosperity and contentment. The heavy volume of the slave trade caused a constant drain of capital to England and New England in payment to the traders; breaking in fresh and refractory Africans was, at the best, unpleasant business; the white mechanics disliked the competition of negroes and mulattoes in their trades, and though the wages of the whites were higher, their number was relatively decreasing; the great and ever-growing mass of half savage negroes, many of them embittered by harsh treatment, was a constant cause for disquiet; and the increasingly strained relations with the mother country were distressing from many points of view. But on the whole, the people, flushed with their success in conquering the wilderness and their unchecked progress in wealth, were consciously happy and bravely optimistic.

When the war came, the situation was in several respects unique. South Carolina was the only colony that had to deal with large numbers of barbaric Africans. Among persons closely associated with these coast negroes there was little disposition to accept theories of human equality. The most influential citizens, whether "patriot" or "loyalist," were determined to preserve the existing industrial and social order as a necessary condition of life in the district, no matter what system of government and allegiance should prevail. The conservatism of the people, in fact, saved the state from such an upheaval as afflicted Virginia in the revolutionary period.

During the war, and for a while afterward, there was grave economic depression in the district. The closing of markets and the military depredations occasioned great though temporary damages, and the loss of the British bounty permanently

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killed indigo production. But the plantation system was not broken down. The planters in large number retained their lands and their slaves, and tided over the lean years with hopes for the return of better times.

About 1786 it was discovered that long-staple cotton, with its high-priced silky fibre, was available as a staple to replace indigo and to supplement rice. Within a few years the new industry was widespread through the Georgia-Carolina lowlands, and planters were becoming serenely prosperous again.

At the close of the century, however, a wholly new factor was introduced, and in the first decades of the following century the economic situation was seriously modified. As a result of Whitney's invention of the gin for short-staple cotton in 1793, the whole interior of the Carolinas, of Georgia and of the Southwest became capable of very profitable development by labor of any and every kind. In the relative scarcity of free labor for this vast region, an enormous demand was made by the upland and western cotton districts for slave labor, which after 1808 could be supplied, in the main, only from the old tobacco and rice districts. Slave prices rapidly mounted to unheard of figures; and with the planters of the Charleston district it became a serious question whether the lure of the golden West for their slaves and themselves could be permanently resisted. Many sold part of their negroes to inland settlers; many moved west carrying with them such slaves as they had or could buy. In some years, as in war times and in periods of low cotton prices, the slave trade and the migration slackened; again it would wax so great in volume that only the most conservative could preserve immunity from the Georgia, Alabama or Texas fever. The migration fever and the interior slave trade carried off nearly or quite all the increase from births, importation and immigration in the Charleston lowlands, as is shown by the returns of the successive censuses.[1] In

[1] POPULATION STATISTICS FOR THE SOUTH CAROLINA LOWLANDS

Charleston District (*i. e. county*)	1790	1800	1810	1820	1830	1840	1850	1860
White	11,801	14,374	16,011	19,376	20,804	20,921	25,208	29,136
Slave	24,071	41,945	45,385	57,221	61,902	58,539	54,775	37,290
Free Colored	775	1,161	1,783	3,615	3,632	3,201	3,861	3,622

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some decades there was positive shrinkage in districts in which before the Revolution the doubling of numbers within a decade had not been unusual.

Charleston and all the surrounding country was seriously threatened with not only a relative but an actual decline of population, white and black, of crops and earnings and of political and social consequence. To save the situation, or even to mitigate the decline, it was necessary to improve the existing system of industry, so as to make every resource tell to the utmost. Labor must be made more productive. This result could be attained in part through improvement in administration. Some of the coast planters, for example, developed such fine varieties of cotton, and guarded their crops so well against careless picking, ginning and packing, that the output of their plantations commanded a heavy premium in the market.[1] But in its crux, the problem was, of course, to improve the quality and effectiveness of the labor itself. The system had to be made flexible by giving to every trustworthy slave, who was capable of self-direction, a personal incentive to increase his skill and assiduity. Under such conditions the laws which impeded industrial progress were increasingly disregarded and became dead letters. Slaves by hundreds hired their own time; whites and blacks, skilled and unskilled, worked side by side, with little notice of the color line; trustworthy slaves were practically in a state of industrial freedom; and that *tertium*

Colleton District	1790	1800	1810	1820	1830	1840	1850	1860
White	3,601	4,394	4,290	4,341	5,354	5,874	6,775	9,255
Slave	16,562	20,471	21,858	21,770	21,484	19,246	21,372	32,307
Free Colored	175	38	211	293	418	428	319	354
Beaufort District								
White	4,364	4,199	4,792	4,679	5,664	5,650	5,947	6,714
Slave	14,236	16,031	20,914	27,339	30,861	29,692	32,279	32,530
Free Colored	153	198	181	181	507	462	579	809
Georgetown District								
White			1,710	1,830	1,931	2,093	2,193	3,013
Slave			13,867	15,546	17,798	15,993	18,253	18,109
Free Colored			102	227	214	188	201	183

Statistics for Georgetown prior to 1810 are omitted, because the district then had very different boundaries and area.

[1] *Cf.* W. B. Seabrook, Memoir on Cotton (Charleston, 1844), pp. 35, 36.

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ELECTRONIC REPRODUCTION PROHIBITED

quid, the free person of color, always officially unwelcome, was now regarded in private life as a desirable resident of a neighborhood, provided he were a good workman. The liberalizing tendencies were fast relieving the hard-and-fast character of the régime, so far at least as concerned all workmen who were capable of better things than gang and task labor.[1]

The great mass of the common negroes, it is true, were regarded as suited only for the gangs and unfit for any self-direction in civilized industry; but even in this case a few thinking men saw vaguely from time to time that a less expensive method of control ought to be substituted for chattel slavery, involving as it did the heavy capitalization of life-time labor as a com-

[1] That the white laboring class was disposed to obstruct the growth of industrial opportunity for slaves, and was acquiring strength for this as years passed, is shown in a remarkable public letter written by L. W. Spratt, of Charleston, early in 1861, to advocate the re-opening of the African slave trade. The letter, nominally addressed to John Perkins, of Louisiana, was published in the *Charleston Mercury*, Feb. 13, 1861. Its remarks upon free and slave labor relations are as follows:

"Within ten years past, as many as ten thousand slaves have been drawn away from Charleston by the attractive prices of the West, and laborers from abroad have come to take their places. These laborers have every disposition to work above the slave, and if there were opportunity would be glad to do so, but without such opportunity they come into competition with him; they are necessarily restive to the contact. Already there is disposition to exclude him from the trades, from public works, from drays, and the tables of hotels; he is even now excluded to a great extent. And . . . when . . . more laborers . . . shall come in greater numbers to the South, they will still more increase the tendency to exclusion; they will question the right of masters to employ their slaves in any works that they may wish for; they will invoke the aid of legislation; they will use the elective franchise to that end; they may acquire the power to determine municipal elections; they will inexorably use it; and thus the town of Charleston, at the very heart of slavery, may become a fortress of democratic power against it. As it is in Charleston, so also is it to a less extent in the interior towns. Nor is it only in the towns that the tendency appears. The slaves from lighter lands within the State have been drawn away for years by the higher prices in the West. They are now being drawn from rice culture. Thousands are sold from rice fields every year. None are brought to them. They have already been drawn from the culture of indigo and all manufacturing employments. They are as yet retained by cotton and the culture incident to cotton; but as almost every negro offered in our markets is bid for by the West, the drain is likely to continue; it is probable that more abundant pauper labor may pour in, and it is to be feared that even this State, the purest in its slave condition, democracy [*i. e.* industrial democracy or self-governing labor, as opposed to slave labor] may gain a foothold, and that here also the contest for existence may be waged between them."

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ELECTRONIC REPRODUCTION PROHIBITED

modity.[1] This period of economic liberalism produced that phenomenal generation of large-minded and powerful statesmen which included William Lowndes, Cheves, Calhoun, William Smith and McDuffie, fitting successors to Rawlins Lowndes, Gadsden, Rutledge, Izard, Drayton and the Pinckneys. No representatives of a perverse or reactionary commonwealth could have gained so decisive an influence upon American affairs as was exercised by these statesmen in the second decade of the century.

To this progress of liberalism a single event gave a violent check. In the early summer of 1822 there was discovered in Charleston a wide-spread and well matured conspiracy among the slaves and free negroes for a servile revolt and the destruction of the whites. The leader was Denmark Vesey, and the headquarters of the conspiracy were in his blacksmith shop. Vesey was a native African of unusual ability, who had bought his freedom in 1800 with part of the proceeds of a prize drawn in a lottery and had made himself a dominating person among the negroes of the city. One of Vesey's right-hand men was Monday Gell, a negro slave of talent, in charge of a harness shop, able to write fluently and much indulged and trusted by his master. Monday, it was afterwards reported, professed to be in correspondence with men of power in Africa and San Domingo who would give aid in the Carolina revolt. The chief organizer among the half-savage, lowest-grade negroes was Gullah Jack, by inheritance a conjurer among the Angolas and reputed to lead a charmed life. Jack, himself little touched by civilization, was unable to plan, but was of great value in rousing the savage nature of his fellows to the desired pitch of frenzy. Another leader was Peter Poyas, who circulated the report that the whites had determined to thin out the negroes and would begin a great killing on July 4. He urged the blacks to rise quickly and forestall the blow. These ringleaders had selected the points at which the negroes in town and outside were to gather, upon a signal to be given at midnight of June 16, and had laid out a program for seizing the guard-house

[1] *Cf.* "The Economic Cost of Slaveholding," by the present writer, in the POLITICAL SCIENCE QUARTERLY, XX, 257 *et seq.*

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ELECTRONIC REPRODUCTION PROHIBITED

and arsenal and sweeping the city with fire and sword.[1] An inkling of the conspiracy reached the police on May 30. The first negroes arrested denied all knowledge of a plot; but after a week's solitary confinement they were ready to talk. Their admissions then led to other arrests and, after another season of tongue-loosening confinement, to still more alarming admissions and in turn to still more arrests. Finally, the evidence brought out at the formal trial of the prisoners laid bare the whole machinery and extent of the plot. The public thus learned the disquieting details in cumulative installments. The general effect of alarm and horror may be better imagined than described. There was apparently, however, no popular hysteria. A special constabulary was appointed for public safety, and a special court to try the negroes under arrest. To its bench were appointed the most substantial, conservative and respected citizens whom Charleston contained. Reputable attorneys were appointed for each side of every case; the trial of each slave was conducted in his owner's presence; and every other precaution was taken for fairness, justice and security. During two months of unprecedented excitement in Charleston, while the trials were in progress, the Charleston corporation was "proud to say," in its official report, that

> the laws, without even one violation, have ruled with uninterrupted sway—that no cruel, vindictive or barbarous modes of punishment have been resorted to—that justice has been blended with an enlightened humanity . . . to those who had meted out for us murder, rapine and conflagration in their most savage forms.

As a result of the trials, thirty-five negroes were sentenced to death and hanged before August 10; twelve were sentenced to death but respited with a view to commutation of sentence; twenty-two were sentenced to transportation; nine were acquitted with a suggestion to their masters that they be transported; and fifty-two were acquitted and discharged. Denmark

[1] An Account of the late Intended Insurrection among a portion of the Blacks of this City. Published by the Authority of the Corporation of Charleston. (Charleston, 1822. Pamphlet, 48 pp.).

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Vesey's plot had passed into history with little noise in the great world outside, but with lasting impress upon the lowland community.

The effect of Vesey's plot upon public sentiment in the Charleston district is eloquently shown in a memorial presented by the citizens of Charleston to the South Carolina legislature in the fall of 1822.[1] It begins with a description of the position of the negroes:

> Under the influence of mild and generous feelings, the owners of slaves in our state were rearing up a system which extended many privileges to our negroes; afforded them greater protection; relieved them from numerous restraints; enabled them to assemble without the presence of a white person, for the purpose of social intercourse, or religious worship; yielding to them the facilities for securing most of the comforts and many of the luxuries of improved society; and what is of more importance, affording them means of enlarging their minds and extending their information; a system whose establishment many persons could not reflect on without concern and whose rapid extension the experienced among us could not observe but "with fear and trembling," nevertheless, a system which met the approbation of by far the greater number of our citizens, who exulted in what they termed the progress of liberal ideas upon the subject of slavery, while many good and pious persons fondly cherished the expectation that our negroes would be influenced in their conduct toward their owners by sentiments of affection and gratitude.

But, the document goes on to relate, a dreadful plot was forming which has now by providential means been discovered. It is the duty of the people and the state to provide preventives for such occurrences in future, and hence this petition to the legislature. Constructive suggestions now follow:

> After a careful inquiry into the existing evils of our slave system, and

[1] Memorial of the Citizens of Charleston to the Senate and House of Representatives of the State of South Carolina. Title-page wanting, and list of signers not printed. 12 pp. This pamphlet, like most others concerning South Carolina in the period, is of extreme rarity. Its text will be reprinted shortly, with kindred material, in a volume of documents on Plantation and Frontier Industrial Society, to be edited by the present writer and published by the American Bureau of Industrial Research (The Macmillan Company, New York). *Cf. American Historical Review*, XII, 207.

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after mature reflection on the remedies to be adopted, [we] humbly recommend that laws be passed to the following effects:

1st. To send out of our state, never again to return, all free persons of color . . . They form a third class in our society, enjoying more privileges than the slaves, and yet possessing few of the rights of the master; a class of persons having and exercising the right of moving unrestrained over every part of the state; of acquiring property, of amassing wealth to an unlimited extent, of procuring information on every subject, and of uniting themselves in associations or societies—yet, still a class, deprived of all political rights, subjected equally with the slaves to the police regulations for persons of color, and sensible that by no peaceable and legal methods can they render themselves other than a degraded class in your society . . . Restraints are always irksome . . . The free persons of color must be discontented with their situation. The hopes of the free negroes will increase with their numbers . . .

The free persons of color will not emigrate, consequently the white people must; so that, as the free people of color are extending their lines, the whites are contracting theirs. This is not a mere speculation, but a fact sufficiently emphasized already. Every winter, considerable number of Germans, Swiss and Scotch arrive in Charleston, with the avowed intention of settling amongst us, but are soon induced to emigrate towards the West by perceiving most of the mechanical arts performed by free persons of color. Thus we learn, that the existence of this class among us is in the highest degree detrimental to our safety . . .

The presence of free persons of color, the memorial continues, sets conditions before the eyes of the slaves which they cannot peaceably realize; it makes their labor irksome and offers many temptations; and the intimate association of these persons with the slaves permits at all times the dissemination of dangerous ideas and news items which the slaves would not otherwise learn. The memorialists admit that inconvenience would arise from the expulsion of the free persons of color, but urge that that must be tolerated for the general welfare. A stern policy, they assert, is necessary, "that we may extinguish at once every gleam of hope which the slaves may indulge of ever becoming free—and that we may proceed to govern them on the only principle that can maintain slavery, the 'principle of fear.'"

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They recommend, further, that the number of slaves to be hired out should be limited by law, and no slave should be allowed to work as a mechanic unless under the immediate control of his master. Most of those who work out, they say, are largely released from control, to work or idle or attend meetings and conspire without hindrance.

> But there is another consideration. The facility for obtaining work is not always the same . . . Irregularity of habits is thus acquired; this irregularity produces restlessness of disposition, which delights in mischief and detests quiet. The same remarks will apply to the negro mechanics, who having a stated portion of labor to perform, are masters of the remainder of the day, when the work is ended.

The memorial closes with still other recommendations for the repression of free persons of color and a more strict police over negroes in general. On the whole, an authoritative expression of more reactionary sentiment would be hard to discover.

Two years prior to this excitement a pamphleteer had written: "We regard our negroes as the 'Jacobins' of the country, against whom we should always be upon our guard, and who, though we fear no permanent effects from any insurrectionary movement on their part, should be watched with an eye of steady and unremitted attention."[1] In 1820 little heed seems to have been given to this writer; but when the terrible discovery of the great plot had been made, his words were read as those of a prophet.

The fright of 1822 soon passed; no important changes in the general system were instituted; and the previous conditions of life and industry were in the main restored. That period of excitement, however, was epoch-making, in that it checked the growth of liberalism and prepared the community for its sensitive hostility to the Garrisonian agitation for the overthrow of negro slavery.

During the remainder of the ante-bellum period the industrial and social conditions of the Charleston district underwent little change. The need for collective efficiency continued to be felt,

[1] A Refutation of the Calumnies, *etc.* (cited *supra*), p. 61.

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and in most cases the actual restrictions on labor were no more severe. Racial, industrial and legal classes were still by no means identical. That free persons of color had a really excellent industrial opportunity in Charleston, and that many of them used it to advantage, is proved by the tax lists of the city. The list for 1860, which is available in print,[1] gives the names of 360 persons of color whose property was assessed in that year. The real estate owned by them was valued for taxation at $724,570. Of these 360 taxpayers, there were 130 who owned slaves aggregating 390 in number. The largest number of slaves held by a person of color was fourteen; the average number was three. In this list of persons of color, thirteen were classed as Indians; their real estate aggregated $73,300, and nine of them owned thirty-three slaves. It is quite probable, however, that most of these so-called Indians had a large infusion of negro blood. This showing of the wealth and slaveholding of the free persons of color demonstrates that industrial opportunity was fairly free for them, and that a number of mulattoes, at least, made large use of their chance to earn money and save it.

By good fortune, we have a census of the city of Charleston for the year 1848,[2] which in its industrial tables gives complete data for a statistical view of the relation of racial, legal and industrial classes in the later ante-bellum period. In summary it is here presented. It shows how large was the intermingling of the races and legal classes in nearly all the important industrial occupations.[3] Neither the public dread of disorder nor the class dislike of negro competition could arrest the forces that urged the community toward the increase of its industrial efficiency.

[1] List of the Tax Payers of the City of Charleston for 1860. (Charleston, 1861; 335 pp.).

[2] J. L. Dawson and H. W. DeSaussure, Census of Charleston for 1848. (Charleston, 1849.) Industrial tables, pp. 31 to 36.

[3] Statistics of employments of the free persons of color in New Orleans and New York in 1850, valuable for comparison with that of Charleston, are printed in G. B. G. DeBow's Compendium of the Seventh Census of the United States, 1850, pp. 80, 81.

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INDUSTRIAL CENSUS OF CHARLESTON FOR 1848

	WHITES		SLAVES		FREE COLORED	
	MEN	WOMEN	MEN	WOMEN	MEN	WOMEN
Artisans						
Carpenters and joiners	120		110		27	
Masons and stone cutters	67		68		10	
Painters and plasterers	18		16		4	
Plumbers and gas fitters	9					
Wharf builders	2		10			
Boot and shoe makers	30		6		17	
Tailors and cap makers	68	6	36		42	6
Bleachers and dyers	5					
Hair braiders and wig makers	3	2				
Barbers and hair dressers		6	4	14		
Bakers	35	1	39		1	
Butchers	10		5		1	
Blacksmiths	45		40		4	
Coopers	20		61		2	
Ship carpenters and joiners	52		51		6	
Riggers and sail makers	13					
Gun, copper and locksmiths	14		1		1	
Cigar makers	10		5		1	
Cabinet makers	26		8			
Carvers, gilders and upholsterers	16		1		1	
Tinners	10		3		1	
Millwrights	4				5	
Saddle and harness makers	29		2		1	
Wheelwrights	6				1	
Horseshoers	6					
Coach makers and trimmers	20		3			
Boiler makers	6					
Machinists	10					
Engineers	43					
Silversmiths and watch makers	38					
Bookbinders	10		3			
Printers	65		5			
Organ and piano builders	4					
Other mechanics and journeymen	27		45		2	
Miscellaneous						
Seamstresses and mantua makers		125		24		196
Milliners		44				7
Market women and milk venders		9				
Pastry cooks and cooks		1	3	12		16
Laundresses				33		45
Mid-wives and nurses		5		2		10
Coachmen	2		15		4	
Draymen	13		67		11	
Omnibus drivers	7					
Wharfingers, stevedores and porters	20		37		6	
Apprentices	56	5	43	8	14	7
Barkeepers	16					
Domestic servants	13	100	1888	3384	9	28
Laborers	192		838	378	19	2
Fishermen	10		11		14	
Superannuated			38	54	1	4

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The following table of slave prices is of value for study in many connections besides that in which it is here used. The prices quoted are the average prices, as well as can be ascertained, of prime field hands for the locality in the years stated. The averages for the Charleston district have been made from a great mass of manuscript bills of sale of slaves bought and sold in Charleston, recorded and now preserved among the archives in the state capitol at Columbia. The origin of the data for the Georgia cotton belt, and the method of handling the figures, have been explained in my article on the economic cost of slaveholding.[1]

SLAVE PRICES IN THE CHARLESTON DISTRICT

AVERAGES FOR PRIME FIELD HANDS

YEAR	PRICE	YEAR	PRICE	YEAR	PRICE	YEAR	PRICE
1800	$500	1814	$450	1830	$450	1844	$500
1801	550	1815	500	1831	475	1845	550
1802	550	1816	600	1832	500	1846	650
1803	575	1817	650	1833	525	1847	750
1804	600	1819	850	1834	650	1848	700
1805	550	1820	725	1835	750	1849	650
1806	550	1822	650	1836	1100	1850	700
1807	525	1823	600	1837	1200	1851	750
1808	550	1824	500	1838	1000	1852	800
1809	500	1825	500	1839	1000	1853	900
1810	500	1826	475	1840	800	1855	900
1811	550	1827	475	1841	650	1858	950
1812	500	1828	450	1842	600	1859	1100
1813	450	1829	475	1843	500	1860	1200

SLAVE PRICES (FOR COMPARISON) IN MIDDLE GEORGIA

YEAR	PRICE	YEAR	PRICE	YEAR	PRICE	YEAR	PRICE
1800	$450	1821	$700	1839	$1000	1853	$1200
1805	550	1826	800	1840	700	1859	1650
1808	650	1828	700	1844	600	1860	1800
1813	450	1835	900	1848	900		
1818	1000	1837	1300	1851	1050		

A comparison of these two local tables shows that slave prices at Charleston after about 1800 were practically never above those prevailing in the upland cotton belt; but that the

[1] POLITICAL SCIENCE QUARTERLY, XX, 264–267.

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interior usually offered a premium which often ranged from one hundred to several hundred dollars per head for prime field hands. The fact that in the face of this premium the planting families of the coast retained such a multitude of slaves in their district throughout the whole period shows that the spirit of the planters was not wholly commercial. It shows that the typical slaveholder of the coast deliberately and constantly preferred the career of the useful captain of industry to the life of the idle rich. Otherwise, the temptation to sell his slaves west would have been irresistible. There is abundant unconscious evidence that the typical planter had a controlling distaste for selling slaves except in emergencies. The dominating consideration with masters and mistresses was not that of great profit, but that of comfortable living in pleasant surroundings, with a consciousness of important duties well performed. However radical they might by force of circumstances become in politics, the Carolina planters were beyond question careful, moderate and intelligently conservative in matters of industry and social policy. But invincible powers, through largely misinformed sentiment, were being arrayed against them; and their unending task of race discipline was destined to most serious disturbance, if not, as it may prove, to permanent arrest.

With the great Civil War and its aftermath we are not now concerned. The killing off of the flower of Carolina manhood in the war time, the heart-breaking sorrow of the women and the old men who stayed at home, the black despair of the oncoming generation, the great upheaval and demoralization in the so-called Reconstruction period and the gradual return thereafter to moderately healthful conditions do not lie within the scope of this paper. It remains only to attempt a general résumé of the situation in the later ante-bellum period.

In the slaveholding districts there was fully as much particularism and competition among the industrial units as anywhere else in America. A condition of the life of the system, in such a region as the Carolina lowlands, was efficiency; and the increasing competition of the West called for an increase of efficiency if the relative standards of prosperity and of comfort were to be maintained. This affected both city and country and

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was the direct concern of every member of the industrial and commercial community. The struggle for increased efficiency tended to make every laborer who was capable of self-direction free to direct his own industrial efforts and to promote his full equipment by education for his work. It tended to cause negroes, mulattoes and whites to be put upon the same industrial footing, and to cause the capable slave to be given industrial freedom, under the system of hiring him to himself or otherwise securing to him rewards in some measure proportional to the value of the work done by him. This was the economic requirement of the times.

But the social requirement was largely in direct conflict with this. The community had always in contemplation the possibility of social death from negro upheaval and control, as illustrated in San Domingo, and the milder fate of industrial stagnation and decay from premature emancipation, as illustrated in Jamaica.[1] To save their commonwealth from approaching either fate, the Carolinians contended with might and main against any abolition to be imposed from without, and in their local regulations they introduced every possible safeguard against successful conspiracy. Through laws enacted, re-enacted and fortified, they provided for strict patrol and general police, forbade the teaching of negroes to read, forbade masters to hire to slaves their time, forbade negroes to assemble without white persons being present, and restricted private emancipation. These laws were more or less observed or more or less disregarded according to the course of events and the play of public sentiment between the social and economic points of view.

From the social point of view, all persons of color were of one class and regarded as all very possibly dangerous; from the

[1] Still another conceivable alternative would have been the fusion of the two races by interbreeding, the attempted blending of moral codes and the consequent degradation of standards, which occurred in several of the Latin American states. That this development was impossible and little thought of in South Carolina was largely due to the English origin of the citizens. They were sturdy, proud, masterful, staunch. To recognize negroid morality and institutions as in any way entitled to equal footing with their own in the community was for them impossible. The tendency of the Garrisonian agitation in that direction was perhaps its most irritating feature.

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economic point of view all capable negroes and mulattoes were looked upon as the equals of the whites in their industrial class, and therefore meriting and requiring the same industrial freedom and incentive that the whites enjoyed. Public opinion oscillated between these two positions; but inclined more generally to the restrictive point of view after Vesey's plot and during the Garrisonian agitation. Official policy in general inclined toward safeguarding society; but private policy was more controlled by economic needs, and in that highly individualistic community private policy largely dominated. Society and industry in fact confronted an *impasse*, and politics were at a loss to find a way out of it unless by the policy of drifting.

In 1860, failing to solve its part of the world's problem of equity in human relationships, the commonwealth clashed with the dominant idea of the period. In the championship of their system the planters and their neighbors were defeated, aud their system was shattered as far as it could be by its victorious enemies encamped upon the field. But the pendulum swings again. Facts of human nature and the laws of civilized social welfare are too stubborn for the theories of negrophiles as well as of negrophobes. The slave labor problem has disappeared, but the negro problem remains.

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THE TREATMENT OF BURGOYNE'S TROOPS UNDER THE SARATOGA CONVENTION

THE attempt to cut New England off from the rest of the revolting American colonies was reaching its inglorious end. The plan had been a brave one. Burgoyne was to proceed down Lake Champlain, to go across country to the region of Albany and there to meet St. Leger, who was to advance from the west, and Howe, who was to push up the Hudson. But St. Leger's army was dispersed; Howe failed to coöperate; and so, instead of making a triumphant union at Albany, Burgoyne found himself alone near Saratoga, on October 12, 1777, in such a position that the annihilation of his army seemed imminent. The commander therefore called a council of war and presented to it the following courses of action: (1) To await an attack in the present position at Saratoga. The chief objection to this was want of provisions. (2) To attack the enemy. It seemed hopeless to attempt to break through the superior numbers of the enemy, strongly posted and entrenched at every point. (3) To retreat. A majority finally reported in favor of doing this. Scouts, however, brought in information that not a movement could be made without immediate discovery by the enemy, and General Burgoyne submitted for consideration the only alternative—surrender. On the 13th, a council unanimously decided that "the present situation justifies a capitulation upon honorable terms."[1]

On the 14th, General Burgoyne sent a message to General Gates, proposing a cessation of hostilities during the time necessary for communicating terms. The latter authorized a cessation of hostilities until sunset and forwarded a series of proposals, providing for the surrender of Burgoyne's army and its march to New England. To the sixth of these stipulations Burgoyne flatly refused to agree. As proposed by Gates it read: "These terms being agreed to and signed, the troops under his Excel-

[1] Burgoyne, State of the Expedition, appendix lvi.

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lency's, General Burgoyne's command, may be drawn up in their encampments, where they will be ordered to ground their arms, and may thereupon be marched to the river side on their way to Bennington."[1] To this the reply was: "This article is inadmissible in any extremity. Sooner than this army will consent to ground their arms in their encampments, they will rush on the enemy determined to take no quarter."[2] Gates gave way, and instead of the offensive article he substituted: "The troops under General Burgoyne to march out of their camp with the honours of war, and the artillery of the entrenchments, to the verge of the river, where their arms and their artillery must be left. The arms to be piled by word of command from their own officers."[3] By another article, free passage home by way of New England was granted to the captives, on condition of their not serving again in the war. An agreement was quickly reached; and on October 16 the terms of the surrender, commonly called the Convention of Saratoga, were finally agreed upon. In brief, the more important sections of the convention were as follows: The arms and artillery of General Burgoyne's army to be given up (art. 1). The troops to be sent to England by way of Boston, on condition of not serving again in the war (art. 2). Provisions to be supplied to General Burgoyne's army "by General Gates's orders," at "the same rate of rations as the troops of his own army" (art. 5). "No baggage to be molested or searched, Lieut. Gen. Burgoyne giving his honour, there are no public stores secreted therein" (art. 6). Officers and men to be kept together "as far as circumstances will permit" (art. 7). Officers to be admitted to parole during their stay in Massachusetts (art. 11).[4]

Easier terms to a conquered army could hardly be imagined. The prisoners were merely to give up their arms and to promise not to take further part in the war. The victors had to furnish guards, to march General Burgoyne's army to Boston, to supply provisions, to provide barracks for the common soldiers and quarters for the officers, to take care not to separate officers

[1] De Fonblanque, Burgoyne, p. 307. [2] *Ibid.* p. 308. [3] *Ibid.*

[4] The convention is printed in many places, *e. g.* Winsor, VI, 317, 318.

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and men and to allow officers the privilege of parole. Every one of these agreements they sooner or later found trouble in keeping or were accused of violating. As for the prisoners, after they had once laid down their arms they had everything to gain from a scrupulous observance of the convention and everything to lose by breaking it. The Americans had much to gain by breaking it and little to gain by keeping it. Under such circumstances the British would naturally cry out upon every slightest infraction of the agreement, while the Americans would always be on the watch for any pretext to say that the British had broken it.

How favorable the treaty was considered by the English may be shown by the testimony of their leaders. Sir Henry Clinton, writing to General Burgoyne from New York, December 16, 1777, excused his failure to assist Burgoyne on the score of his lack of troops, and added: "As it was, I cannot but flatter myself that the stroke which the late and scanty reinforcement of recruits enabled me to make was of service to you in your Convention, which I agree with you was most favourable."[1] And the Earl of Harrington, captain in the 29th regiment, in his testimony during the parliamentary investigation of the campaign, replying to a question about the favorableness of the terms, said: "Few persons in the army expected so good terms as those which were granted."[2]

The considerations which influenced General Gates to conclude a peace so advantageous to the enemy are set forth in a message to Congress delivered by Colonel Wilkinson:

I have it in charge, from Major General Gates, to represent to the Honourable, The Congress.—
That, Lt. General Burgoyne at the Time he Capitulated, was strongly Intrenched on a Formidable Post, with 12 Days Provision: That the Reduction of Fort Montgomery and the Enemies consequent Progress up the N[orth] River endangered our Arsenal at Albany; a Reflection which left Him no Time to Contest the Capitulation with Lieut. Genl. Burgoyne, but induced the Necessity of immediately closing with his

[1] De Fonblanque, Burgoyne, p. 324.

[2] Burgoyne, State of the Expedition, p. 56.

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Proposals, hazarding a disadvantageous Attack, or retiring from his Position for the security of our Magazine, this delicate Situation abridged our Conquests & procured Lt. Genl. Burgoyne the Terms he enjoys—had an Attack been carried against Lt. Genl. Burgoyne, The dismemberment of our Army must Necessarily have been such as would have incapacitated It for further Action this Campaign—With an Army in Health, Vigour, & Spirits Major General Gates, now awaits the Commands of the Honl. Congress. . . .[1]

Gates's position was better and Burgoyne's worse than the above plea indicates. At the last council of war which Burgoyne held before the capitulation, several of his officers declared their position untenable, some of the regiments disheartened or not to be depended upon and most of the best officers sick or wounded.[2] Gates could not have been ignorant of his great superiority in numbers,[3] as the campaign had already been a long one, and besides he had long before received accurate information of the size of Burgoyne's army.[4] The danger from the progress of the enemy up the North River was indeed to be considered; yet at the time when his anxiety on this account was influencing Gates so strongly, Burgoyne's council of war was resolving: "Should General Clinton be where reported, yet the distance is such as to render any relief from him improbable during the time our provisions could be made to last."[5] Apparently General Gates should have come to the same conclusion. During the last part of September and the first part of October, he was constantly receiving information of the movements of Clinton from Colonel Hughes, General Putnam and others.[6] How many messages he may

[1] Copy of the original in the Gates papers, New York Historical Society. Printed with few changes in Wilkinson, Memoirs, I, 333.

[2] Burgoyne, State of the Expedition, appendix lx.

[3] The Americans had 13,216 rank and file fit for duty, while the British had 4157. Gates Papers, "Returns" and vol. 10.

[4] See a letter to Gates from the Council of Safety of Vermont, September 20, 1777. Gates Papers, vol. 9.

[5] Burgoyne, State of the Expedition, appendix lx. General Clinton had attempted to aid Burgoyne by a brief but vigorous raid up the Hudson, during which he captured Fort Montgomery and did considerable other damage.

[6] Gates Papers, September–October, 1777.

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have received which have not come down to us, we of course cannot know; but the existing letters do not reveal a situation which should have disquieted a determined soldier. To be sure, the capture of Fort Montgomery aroused alarm, and Colonel Hughes feared that the Americans were about to get into "a confounded Hobble"; but on the whole the information received by Gates shows Clinton's advance to have been so slow that the former could easily have destroyed Burgoyne's army and then have prepared to face Clinton in case the latter came further up the river. However, Gates was undoubtedly acting within his powers as a military commander when he agreed to the terms of the convention; and anything which shows these terms to have been too easy shows indeed how great must have been the temptation to break the agreement, but does not excuse any departure from its provisions.

Of the way in which the British looked upon the convention while it was in the making, and of the German view of the pledges given to the Americans, General Riedesel, commander of the Germans in Burgoyne's army, has left us spicy and naive accounts. The general's story is given in the well-known *Memoirs*[1] of his wife, Madame de Riedesel. According to this story, the commissioners from the two sides finished their work at eleven in the evening, and the British commissioners retired to their lines, promising to return the treaty in the morning, with their commander's ratification. The convention was now in its final form, had been verbally agreed to by both generals, but had not yet been signed by Burgoyne. Not long after the British commissioners returned to their lines,

> a deserter informed us that he had heard that general Clinton had not only taken the intrenchments on the Highlands, but that a week ago, he had advanced with his troops and his fleet to Aesopus, and must, in all probability, have reached Albany, by this time. General Burgoyne, and several other officers, were so much elated with this news, that they began to think of breaking the capitulation.[2]

[1] Translation, 1827, pp. 156 *et seq.* *Cf.* Burgoyne, State of the Expedition, pp. 32, 33, 38, 39.

[2] Riedesel, Memoirs, pp. 156, 157.

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Another council of war was instantly convened and the questions put: (1) Whether a treaty definitively settled by commissioners could be broken, even after the general had promised to sign it, "without a violation of the rule of honour." On this question, fourteen voted in the negative; but eight declared that it would be honorable to break a treaty which had been concluded under such circumstances and by which everything had been granted that was required by the party now repudiating the agreement. (2) Whether the intelligence just received was sufficiently authentic to justify the rupture of so advantageous an arrangement. Opinions were divided:

> Those who were in the negative, were influenced by the consideration that the intelligence received was mere hearsay. It would be very different, said they, if general Clinton had sent a despatch, or if the informer had arrived from that general's army; and, even if the general was at Aesopus, he would yet be too distant to relieve us from our desperate situation.[1]

At a later council of war General Burgoyne appealed to General Riedesel for his opinion, and the latter declared "that, after all the steps which had been taken, he considered it as still more dangerous to break the treaty on the ground of news which were so uncertain and unauthentic" (than to be called to account for the failure of the expedition). Brigadier General Hamilton was of the same opinion. "After much deliberation, general Burgoyne resolved to ratify the capitulation, and he forwarded it by major Kingston."[2]

Equally cool is the story which the Germans tell of how they deceived the Americans in regard to the German flags. "General Riedesel ordered that no colours should be surrendered with the arms; that the staves should be burnt, and the flags carefully packed up: by means of which, each of the German regiments remained in possession of its colours." When at a later

[1] Riedesel, Memoirs, pp. 156–158.

[2] The memoir of General Riedesel from which this account was taken was dated, the translator says, October 18, 1777, and was signed and certified by all the officers who had commanded the several German regiments and battalions.

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period Burgoyne's army was ordered to Virginia, further precautions were taken. Mme. Riedesel completes the story:

> On that occasion it became incumbent on me to devise new means of preserving the colours of the German regiments, which we had made the Americans believe we had burned. . . . We had, however, only sacrificed the staves, and the colours had been carefully concealed. My husband having told me this secret, . . . I shut myself up in my room with an honest tailor, to make a mattress, into which we introduced them. Captain O'Connel, under pretence of some commission, was sent to New York, and he took the mattress in lieu of a bed; and he did not part with it until his arrival at Halifax. There I received it again, while we were on our voyage from New York to Canada, and, in order to avoid all suspicion, if our ship should be attacked, I kept it in my cabin, and slept, during all the rest of our passage, upon these honourable badges. [1]

Some of the British flags also were hidden away in General Burgoyne's baggage, although he had declared upon his honor that no public stores were secreted therein.[2] These colors were kept by Lieutenant Colonel Hill of the ninth regiment, and in 1781, when he returned to England, he presented them to George III. Hill was appointed aide-de-camp to his majesty, with the rank of colonel in the army.[3]

Meanwhile the "convention troops," on the day after the formal exchange of the articles of convention, had begun their march toward Boston—over the Green Mountains from Saratoga to the Connecticut valley, down the valley through the historic towns of Northfield, Deerfield and Hatfield, then east across the river and through Hadley, Amherst and Worcester to Cambridge. The last mentioned place was reached November 6. The English were quartered on Prospect Hill, the Germans on Winter Hill. The officers were allowed to quarter themselves in the towns of Cambridge, Mystic and Watertown, and were given a parole district of about ten miles' circumference;

[1] Riedesel, pp. 200, 201.

[2] *Cf.* article 6 of the convention.

[3] See a fuller discussion of this topic in Horatio Rogers, Hadden's Journal and Orderly Books, appendix, pp. 400 *et seq.*

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but to preserve order among the common soldiers, three officers of each regiment constantly resided in the barracks.[1]

Instead of being immediately transported to England, as they had expected, the troops remained prisoners in Cambridge until they were sent to Virginia in November, 1778. During this interval several vexatious difficulties arose which soured relations between the two armies, led Congress to grow more and more suspicious of the good faith of the British, caused the British to lose all trust in the Americans, and ended in keeping the convention troops in America until the close of the war. In the course of these controversies the convention was torn to pieces and cast to the four winds. The causes of the trouble were: (1) The quartering and provisioning of the captured officers and soldiers. (2) Disorderly behavior by the prisoners and scuffles which broke out between them and the American sentinels. (3) The attempt of General Heath, the commanding officer in Massachusetts, to get descriptive lists of the "conventioners," in order to discover them if they tried to return to America after being transported to England. The development of ill-feeling will be described, in order to show how it brought about the resolutions of Congress (January 2, 3 and 8, 1778) indefinitely delaying the embarkation of the troops.

General Heath, who was in command of the Eastern department, with headquarters at Boston, realized that the coming of the convention troops to Cambridge would put a heavy burden on his shoulders. As soon as he knew that the prisoners were to be under his direction, he began the building of barracks and the collection of fuel and provisions—matters which gave him great uneasiness, since he thought that the British were used to much better quarters than he could supply, and fuel and food were scarce.[2] At the outset pleasant relations were established

[1] The best account of the experiences of these prisoners from the British soldier's point of view is contained in a series of breezy letters by Thomas Anburey, published in two volumes under the title: Travels through the Interior Parts of North America (London, 1791). The first volume contains a map showing the travels of the convention troops. The paragraph in the text is based on the map and on vol. ii, pp. 54–58.

[2] Heath to Washington, October 25, 1777. Heath Papers (Massachusetts Historical Society Collections, series 7, vol. iv), part ii, pp. 166, 167.

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between General Heath and General Burgoyne. As soon as the prisoners arrived, their commander was entertained at dinner by Heath. The crowds that flocked to see the captive Briton pass along the streets treated him with respect . . . "dignified conduct" on the part of his "dear countrymen" which "charmed" Heath's "very soul."[1] But his soul was to be racked rather than charmed, for a cloud much larger than a man's hand was already above the horizon. While the convention troops were on the way to Cambridge, the Council of Massachusetts had been applied to for aid in getting quarters for the officers in private houses. A committee of the legislature was appointed to attend to the matter, but it did not succeed in finding enough rooms. The committee blamed Heath for this, and the latter reciprocated in emphatic terms. On November 11 he wrote to the Council:

> The unhappy and disgraceful situation of Genl. Burgoyne and his officers is the only reason that constrains me again to write you on the subject of providing them with proper quarters. . . . The officers now begin to appear disgusted. . . . The honor of the State is in danger, the publick faith responsable, circumstances will no longer admit of delay, decisive measures must be immediately adopted. . . .[2]

He suggested that one of the Harvard College buildings might be obtained, but the suggestion was not carried out. November 18 he again complained to the Council, stating that he had allowed Burgoyne to send a messenger to Washington and to Congress, to represent to them that the convention had been broken as to quarters.[3] Recrimination, however, failed to bring any result, and the officers were allowed to accommodate themselves with rooms wherever they could find them within the limits of their parole.[4] Blame for this state of affairs can hardly be laid wholly upon either General Heath or the Council. General Glover[5] probably stated the real reason for the trouble

[1] Heath, Memoirs, p. 137.

[2] Heath Papers, II, 176, 177. [3] *Ibid.* II, 178, 179.

[4] Anburey, II, 54, 55. Heath Papers, II, 180.

[5] Commander of the escort from Saratoga to Cambridge.

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when he wrote to General Gates that quarters could not be obtained for the British officers, "as the Inhabitants of Cambridge are totally averse to accommodating them. . . . ('They cannot forget the burning of Charles-Town.')" [1]

This difficulty in finding quarters led directly to the suspension by Congress of the embarkation of the troops. On November 14, Burgoyne had written to Gates complaining of the lack of quarters and had used the phrase, "the public faith is broke." [2] This careless expression was pounced upon by Congress. On January 2, it resolved that Burgoyne's letter to Gates was unwarranted and was a strong indication of his intention to break the obligation to which he had subjected himself. It was voted "that the security which these states have had in his personal honor is hereby destroyed," and the next day it was voted to detain the troops.[3]

The vexation caused by unsatisfactory quarters was increased by the scarcity of provisions and of fire-wood. The journals of the prisoners abound in complaints on these scores.[4] Heath was doing as well as he could to supply food and wood, but he was struggling against heavy odds. Wood was very scarce, the inhabitants themselves not being able to get a sufficient supply.[5] The American army had occupied the region in 1775, and the cruisers of the English prevented bringing a supply of fuel from outside. Provisions were costly, partly because of real scarcity and partly because of inefficient commissary service. Funds were low.[6] Furthermore, the enforced inactivity of the men made them fretful and fault-finding, while every renewed delay in their embarkation made them more and more unruly.[7]

[1] December 4, 1777. Gates Papers, vol. 11, in New York Hist. Soc. For the correspondence of Heath on this topic, see Heath Papers, II, *passim*, and especially pp. 173, 176, 178, 182, 186, 191.

[2] Journals of Congress, IV, 4; Anburey, II, 77. See the letter in American Antiquarian Society Proceedings, October 22, 1877, p. 41.

[3] Journals of Congress, IV, 4–7.

[4] See, *e. g.*, R. Lamb, Journal, pp. 196 *et seq.*; Anburey, II, 54, 55.

[5] Heath Papers, II, 166, 167; Heath, Memoirs, p. 134.

[6] *Cf.* Heath Papers, II, 180, 212, 215; Rogers, Hadden's Journal, pp. 328 *et seq.*

[7] "Our ennui increases and becomes almost unbearable." Letter of a prisoner, quoted in Schlözer, Briefwechsel, IV, 381.

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Discipline was the second great problem which confronted both sides. The commanders feared disorder from the beginning, and time justified their anxiety. The situation at Cambridge, Anburey wrote on December 9, had become unpleasant and dangerous. The soldiers were in continual broils with the American guards, "which are composed of militia, who not being under very great discipline, not only infringe their orders, which perhaps they do not comprehend, or else use their authority as they think proper; . . ."[1] On the other hand, Burgoyne, in his orders to his troops on November 12, said that great numbers of soldiers flocked to town and were "productive of many irregularities." On this account a field officer was appointed to superintend absences. No soldier was to go out without a pass and passes were to be granted from 8 A. M. to 3 P. M. only. Two days later he again called the attention of his officers to irregularities and urged more care.[2] On January 10, Heath wrote to Burgoyne:

> Complaints of most enormous abuses, have lately been made to me; one, of the conduct of a number of officers on the evening or night of the 25th of December, at Braddish's tavern; others, of prisoners being rescued from the guards—centinels abused and insulted on their posts—passes counterfeited, and others filled up in the most affrontive manner; and of late, several highway robberies committed in the environs of the garrison. . . .[3]

On the same day, Burgoyne, in his orders to his troops, said that among the frays which had lately occurred he observed, "with infinite Concern," that too many were imputable to "the Indiscretion of our own Troops; of this, the attacks upon the Provincial Sentries, and the forging of Passes, are particularly glaring . . . Our own Officers should be the first to detect and punish Offences of this sort . . ."[4] On the whole, the blame is justly distributed in Burgoyne's letter to Heath, of January 13: "That there have been levities, indiscretions, faults of

[1] Anburey, Travels, II, 72, 73.

[2] Rogers, Hadden's Journal and Orderly Book, pp. 327 *et seq.*, 340.

[3] Heath, Memoirs, p. 153.

[4] Rogers, Hadden's Journal, pp. 338, 339.

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omission, of neglect, and of liquor, I am ready to believe: but I have never spared any efforts to correct them and they have been pretty well atoned by the beating, imprisonment, and death received at the hands of your people." [1]

Brutal conduct on the part of a certain Colonel Henley formed one of the most specific of the British grievances.[2] On General Burgoyne's complaint Colonel Henley was tried by court martial. At this trial Burgoyne charged that "wanton barbarities have been committed, and a general massacre of the troops under my care, apparently threatened." [3] The evidence seems clear that Henley had acted in an outrageous manner and had stabbed a British soldier, though it is difficult, if not impossible, to find out just how much blame should be attached to provocation on the part of the British soldiers and how much to the American officer's hot temper. Henley himself made no defence except to say that he had done nothing but what the honor and safety of the country required.[4] His defenders claimed that the seriousness of the affrays had been over-estimated and that Henley had been provoked by the haughtiness of the British, although they admitted that he had acted with warmth. Burgoyne probably injured his cause before the court martial by using language that was too heated and which overstated the harm done, but the occasion justified much of his wrath.

Another controversy, which led directly to the January resolutions of Congress, was aroused by the demand of Congress for lists of Burgoyne's soldiers. On November 8 Congress resolved that Heath should take an accurate and careful description of all persons concerned in the convention, for purposes of identification, and that Heath should send copies of these lists to the board of war.[5] The order was communicated to Burgoyne and he refused to comply, complaining that the demand was insulting to his country.[6] Finally, however, he agreed, but said that he supposed that it would answer the purpose if the

[1] This letter is printed in *Mag. Am. Hist.*, 1885, p. 484.

[2] The fullest account of this well-known case is in Anburey, II, 81 *et seq.* See also P. W. Chandler, Criminal Trials, II, 150 *et seq.*

[3] Anburey, II, 95. [4] *Ibid.* II, 130.

[5] Journals of Congress, III, 486, 487. [6] Heath Papers, II, 186–188.

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lists were furnished at any time before the troops departed. Heath saw that the work could not be done by force, because all information about the soldiers could be evaded except size and complexion, so he set the matter before Congress. President Laurens wrote Heath not to press the demand, as Congress would consider it.[1]

While these things were happening in Cambridge, Washington was thinking about the convention. He foresaw that if the convention prisoners were allowed to return to England, they could relieve garrisons at home and thus enable the ministry, without violating the words of the agreement, to send an equal number of other troops against the United States. But this would take away all the benefits of the hard-earned and sorely needed victory at Saratoga. Yet, on the other hand, Washington regarded the terms of the treaty as "obligatory."[2] In order, therefore, to satisfy at the same time his desire to win every advantage to the American cause and his strict sense of honor, Washington suggested to Heath that while the troops should be allowed to embark, yet the embarkation should not be facilitated. "I look upon it that their principal difficulty will arise from the want of provisions for the voyage; and therefore, although I would supply them with every article agreeable to stipulation, I would not furnish an ounce for sea-store, nor suffer it to be purchased in the country."[3] Later in the same month Washington communicated his fears to the president of Congress.[4] It was in a similar spirit of carrying out the obligations of the treaty but not hastening the departure of the prisoners that he opposed allowing the troops to embark from Rhode Island, when it was rumored that Howe would request such a privilege rather than send his transports around the stormy Cape Cod in winter.[5]

[1] Heath, Memoirs, pp. 140 *et seq.*

[2] Washington to Powell, President of the Council of Mass., November, 5, 1777; Sparks, Washington, V, 137, 138; *cf. ibid.* 143–145.

[3] November 5, 1777. Heath Papers, II, 77.

[4] Washington to Laurens, November 26, 1777. Sparks, Washington, V, 171.

[5] Sparks, Washington, V, 26.

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Congress, also, had been thinking the convention over and was going through the process of changing its mind. On November 4 it had voted thanks to General Gates for his capture of Burgoyne "upon terms honourable and advantageous to these states," and had ordered that a medal be struck and presented to the victor.[1] About the same time the war office wrote to Gates asking for an exact return of the military stores taken from the enemy.[2] On November 22 it was resolved to send to Gates a series of questions concerning the small quantity of stores which he reported captured, but at the same time it was declared: "That it is not to be understood that the embarkation of the troops under lieutenant general Burgoyne is in any wise to be delayed on account of the foregoing queries, if transports arrive before the answers are returned and the enquiry directed is finished."[3] Gates's reply to the inquiries was that some of the accoutrements had been forgotten in the convention and much that was captured was afterwards lost or was sold by the American soldiers for drams. He expressly absolved Burgoyne from any blame. The obvious inference from the reply was that Gates was himself careless in making the convention and in seeing to its fulfillment, though this did not prevent Congress from using the smallness of the captured stores as part of the pretext for its January resolutions.[4] It was just after Congress voted to inquire why Gates had captured so small a quantity of supplies, that Washington wrote to Laurens of his fear that the prisoners, if allowed to return to England, would merely relieve garrisons there. It was in December that Congress received word from Gates of the letter of Burgoyne declaring the public faith "broke." It seems clear that these two letters had great influence in bringing about a change in

[1] Journals of Congress, III, 373, 374 (ed. 1800).

[2] Richard Peters, Secretary, to General Gates. Gates Papers, vol. 11.

[3] Journals of Congress, III, 524-526.

[4] In the manuscript draft of the reply of Gates, in the Gates Papers, explanation is made that on the day of the surrender he was so busy that he was unable to give as much attention to the fulfillment of the terms as he could have wished. This explanation is crossed out with a sweeping X, as if Gates feared that he might seem to admit neglect of his duties.

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the attitude of Congress. At any rate, Laurens wrote on December 27 to Heath, instructing him to ascertain the tonnage of the transports which Howe was sending around to Boston and the amount of fuel and provisions which he had, so as to see whether they were sufficient to take so many prisoners to England, for Congress feared that the transports might merely carry the captives around to New York and reinforce the army there. Further, Heath was to see that "all accounts be liquidated and the amount due by Lt. Genl. Burgoyne . . . actually paid in gold or silver . . ."[1] These acts would delay embarkation "without subjecting the honour of the House or of its constituents to any unfavorable imputation from the world," and would give Congress more time to consider a settled policy about the prisoners.

The policy was soon settled. On January 2, Congress resolved that Burgoyne's letter to Gates saying, "the public faith is broke" was unwarranted and was a strong indication of his intention to break his own obligations. It was voted that the States were no longer sure of his personal honor. On January 3 Congress voted to hold the troops until the convention should be explicitly ratified by the court of Great Britain. This was a mere pretext for delay, for Congress well knew that Great Britain would concede no such recognition of the independence of the the United States. Moreover, any demand for ratification of the treaty should have been made long before. On January 8 Congress considered letters from Heath, Burgoyne and Gates. The report of a committee expressed suspicion of the good faith of Burgoyne, on the grounds of "numbers of the cartouch boxes and several other articles of military accoutrements missing," Burgoyne's letter to Gates, "many other circumstances attending the delivery of the arms and military stores," and the failure of Burgoyne to comply with requests for lists of his soldiers. Embarkation was therefore suspended. The vote came on the question whether the convention had been broken by the failure to deliver up the cartouch boxes and "several other

[1] Laurens to Heath, December 27, 1777. Heath Papers, II, 194 *et seq.*

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articles of military accoutrements." Fourteen members voted aye; four, no.[1]

The common soldiers had now to submit to the inevitable and settle down for a long stay in America, but General Burgoyne felt that it was necessary for him to return to England. On February 11 he wrote to Congress asking for a parole for himself and the officers of his family, because of poor health and because of need to defend himself from aspersions after "an intricate and unsuccessful campaign."[2] The desired parole was granted by Congress March 3. But before he was allowed to depart, Congress had a final demand to make. On December 19 it had been voted that supplies furnished Burgoyne's troops should be paid for in solid coin or replaced in kind.[3] The demand was made on the ground that Howe had compelled the sending-in of provisions for American prisoners, had prohibited the circulation of state paper in districts under his control and had counterfeited large sums of continental bills of credit. Congress resolved that Burgoyne should not leave America until his bills were paid. And so arrangements were made for paying for provisions in kind, and for fuel and the expenses of the march from Saratoga in coin. The unloading at Boston of the provisions sent to liquidate the accounts was paid for by Heath in currency, but Congress compelled the British to repay the cost of handling in specie.[4]

The difficulties of taking care of the prisoners still continued. In June, 1778, a British lieutenant was shot by an American sentinel. Provisions continued scarce. On February 19 Congress resolved that, inasmuch as the troops were to be kept, the Council of Massachusetts should be authorized to distribute the troops in any way most convenient for subsistence and security.[5] In the middle of April one brigade of the prisoners was moved

[1] Journals of Congress, IV, 4–7, 13–18.

[2] De Fonblanque, Burgoyne, pp. 328, 329. After his return, a parliamentary investigation and a war of pamphlets ensued. Burgoyne published his State of the Expedition, which is a valuable source of information about the campaign and the surrender.

[3] Journals of Congress, III, 581, 582.

[4] Heath, Memoirs, pp. 160 *et seq.* Heath Papers, III, 299; II, 225, 226. Baxter, Digby's Journal, pp. 60, 61.

[5] Journals of Congress, IV, 108.

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to Rutland, a hill town in the middle of the state.[1] The burden was still too great for Massachusetts; and on September 11 Congress voted that Sir Henry Clinton should be informed that, unless passports to American ships to get provisions to the convention troops about Boston were granted within three days or measures were taken by him for sending to Boston ample supplies of provisions and fuel by October 5, Congress would deem itself justified in removing the prisoners to other parts of the United States. Nothing resulted from the request, and on October 16 Washington was directed to take steps to remove the conventioners to Charlotteville, Virginia.[2]

The prisoners had now to face a journey of eight hundred miles in winter, with insufficient clothing. On November 10 the whole body, now numbering 4145, started southward in three divisions, one day's march apart.[3] The line of march led through the center of Massachusetts to the Connecticut River, then down into Connecticut and across the state, over the Hudson at Fishkill, through New Jersey and so into Pennsylvania. From Lancaster, in the last named state, they went across Maryland and finally into Virginia. It was the beginning of the new year (1779) when the march ended. The weather was unusually severe for Virginia, and snow covered the ground.[4] At first, therefore, the troops suffered, as they were in block houses without windows or doors, but they went diligently to work and constructed better dwellings, so that "in a short time, the place assumed the appearance of a neat little town."[5] Pleasant relations grew up between Jefferson, whose home was near Charlotteville, and the commanders of the prisoners. The officers were allowed to go a circuit of 100 miles on parole, and many lived at plantations 20 to 30 miles away from their men, although later this privilege was restricted to 20 miles.[6]

But the trials of the much abused conventioners were not

[1] Anburey, II, 192, 193.

[2] Journals of Congress, IV, 532, 533, 600, 601.

[3] Heath Papers, II, 279.

[4] Anburey, II, 281 *et seq.*

[5] Mme. Riedesel gives some account of her life in Virginia, Memoirs, pp. 215 *et seq.* *Cf.* Anburey, II, 392 *et seq.*

[6] Anburey, II, 284, 356.

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over. September 20, 1780, Congress resolved that the governor and council of Virginia should prepare to move the troops northward, in case of an invasion of the state[1]; and in October part of the army started. They were sent to Lancaster in Pennsylvania. Later, those who had been left behind in Virginia were sent north.[2] At Lancaster the privates and non-commissioned officers remained, while the other officers were sent to East Windsor, Connecticut, where they stayed a short time before being exchanged.[3]

Between the convention of Saratoga and the final exchange of the convention troops, the number of desertions was so great that the army almost melted away. December 4, 1777, while the army was still in Cambridge, Burgoyne issued orders concerning the "unprecedented Disgrace into which these Troops are sinking" by reason of the "unmanly Cowards" and "wretches" who desert.[4] That the general had reason to be angry is shown by the fact that at the end of two months nearly 400 British and 20 Germans had deserted.[5] On April 19, 1778, Heath wrote to Phillips (commander after Burgoyne left for England) that he had forbidden the enlisting of either prisoners or deserters from the convention army, but added: "The Arts and Deceptions made use of by your People, by Dressing themselves in sailors & peasants habit and by the most solemn Protestation of having no Connections with the army are Constantly Imposing upon the recruiting officers, to their great Embarrassment."[6] On May 20, 1778, Anburey wrote: "The Americans are too successful in enticing our soldiers to desert; a few days since, the whole band of the sixty-second regiment, excepting the Master, deserted in a body, and are now playing to an American regiment in Boston."[7] According to the same writer, many, especially Germans, deserted during the journey through New York, New Jersey and Pennsylvania, when they

[1] Journals of Congress, VI, 294. [2] *Ibid.*, VI, 390; VII, 40, 50, 51.

[3] Anburey, II, 443, 444, 448, 477, 483.

[4] Rogers, Hadden's Journal and Orderly Book, pp. 330 *et seq.*

[5] Eelking, German Allies, p. 145. *Cf.* Lowell, Hessians, ch. 24.

[6] Rogers, Hadden's Journal, pp. 348, 349. [7] Anburey, II, 205.

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saw how comfortably their countrymen were living there.[1] By the spring of 1781, a regiment that had numbered 450 men in Canada was reduced to 60 men.[2]

About the release of the convention prisoners, little can be said, except that individuals and small groups, generally officers, were constantly being exchanged. In 1778 a demand was made by the British peace commission that the troops be allowed to depart. Nothing came of this[3]; but some exchanges were made, since Congress resolved, October 31, that a return be made to General Heath of the officers of the convention troops who had been exchanged and for whom.[4] During the next few years Congress paid much attention to the matter of exchanges of prisoners, the gist of the resolutions being that Washington was authorized to arrange cartels.[5] A partial exchange of Germans, chiefly officers, was effected in 1780. In that year both Riedesel and Phillips were released. Next year Anburey speaks of the release of some prisoners, himself among the number.[6] As late as May, 1783, some German regiments were still in Maryland, but were released about that time.[7] Doubtless these were among the last to be exchanged.

The convention and its breaking have been the source of endless controversy. Many British historians have soundly cudgelled Congress for its "Punic faith," and American excuses have been rather lame. If full justice is to be done to both sides—if such a thing is at all possible—several points must be considered.

(1) Gates's convention was a poor one. The victors gave too much and received too little. The agreement left too much to "words of honor" and "public faith," which are notoriously weak when subjected to the strain of war. The temptation for the Americans to break the treaty was therefore very great.

[1] Anburey, II, 275, 276. [2] *Ibid.* II, 388 *et seq.*, 436, 437.

[3] American Antiquarian Society Proceedings, October 22, 1877, pp. 68, 69.

[4] Journals of Congress, IV, 630.

[5] Journals of Congress, V, 85, 239; VII, 170, 279, 437, 474, 475.

[6] See Riedesel, Memoirs, pp. 221 *et seq.*; Eelking, German Allies, pp. 151, 152; Anburey, II, 477, 483.

[7] Eelking, pp. 260, 261.

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(2) It is a grave question whether Burgoyne would not have broken his promise to sign the treaty if he had been a little more sure of aid from Clinton.

(3) It cannot be doubted that in regard to colors both the British and the Germans violated the agreement.

(4) The troubles over quarters, supplies and discipline were exasperating in the extreme, but most of them were inevitable. This excuse does not apply to the case of Colonel Henley.

(5) Burgoyne was unwise in refusing to give the descriptive lists; for, while the convention did not require him to supply them, yet his refusal added to the suspicions of Congress.

(6) The conduct of Congress was suspicious and small. It seized upon the slightest excuses for holding the prisoners and stoutly refused to repose any confidence in the good faith of the British commanders. Congress could not repudiate the treaty "out of hand," since the generals were acting within their powers in making the convention. Still, it shared Washington's fear that to release the army would be to ruin the American cause; and hence the majority of its members acted as human beings are prone to act under similar circumstances—instead of frankly disavowing the treaty and giving their real reasons, they tried to defend their action under flimsy pretexts.

(7) Finally, Congress showed itself grasping in compelling specie payments for supplies and services.

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DE FACTO OFFICE

THE supreme court of the state of Ohio declared in 1902 that the charter of the city of Cleveland was unconstitutional because contained in a special act.[1] By this decision all the previous adjudications of that court on that point were squarely reversed, and as a result every important city in the state was left without a constitutional form of local government and with scarcely a single office created in accordance with the constitution. To avoid complete political chaos, six months were given to the legislature to create a new code before the decision should go into effect.

In such a situation the important question arises: Have the official acts of the incumbents of such municipal offices any legal weight at all, or may they be impeached in direct or in collateral proceedings because of illegality in the establishment of the office? Had the courts of Ohio followed the so-called Shelby County[2] rule, *viz.* that in the absence of a *de jure* office there can be no *de facto* officer, they would have had to declare that all the municipal officers in the state were mere intruders and that all the acts of such officers were null and void; for under that rule the incumbents of offices not in existence *de jure* could not have been recognized as officers *de facto*. But the supreme court of Ohio, a few years before, had distinctly repudiated this rule, asserting that the question whether official acts are to be treated as the acts of a *de facto* officer is in no wise dependent on the existence of a *de jure* office but upon other and broader principles.[3]

The question is one of practical importance to students of American public law; for it is by no means sure that the courts of any other state in which special legislation is constitutionally

[1] State *v.* Cowles (1901), 64 Ohio St. 162; State *v.* Jones (1902), 66 Ohio St. 453; State *v.* Beacom (1902), 66 Ohio St. 491.

[2] Norton *v.* Shelby County (1886), 118 U. S. 425.

[3] State *v.* Gardner (1896), 54 Ohio St. 24.

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prohibited may not, like the Ohio courts in 1902, squarely reverse themselves and declare to be constitutionally non-existent a large number of public offices which for half a century or more have been supposed to be a fixed part of our political system; and in almost every commonwealth it is still an open question whether the so-called Shelby County rule shall or shall not prevail. It is therefore highly desirable to examine the authorities for that rule and to endeavor to determine whether it has any basis either in legal principle or in precedent.

As a first step toward such a determination we must inquire under what circumstances the courts recognize as *de facto* officers persons occupying offices to which they are not entitled.

I

It has always been a principle of the common law of England that one who obtains a public office with no show of right is a mere intruder and acquires no title to the office. But in order that his title to the office may not be impeached in a collateral proceeding, that is in a proceeding to which he is not a party, it is not necessary that he shall have observed all the rules which govern the attainment of the office which he occupies. In order that he may be treated, so far as the ordinary public is concerned, as a legally appointed or elected officer, all that is necessary is that he fall into the class of what are commonly known as *de facto* officers. As Judge Buller said in State *v.* Carroll: "An officer *de facto* is one whose acts, though not those of a lawful officer, the law upon principles of policy and justice will hold valid so far as they involve the interests of the public and of third persons." [1]

By writers on the subject a *de facto* officer has been variously defined, but no definition has yet been found which fits all the cases. The earliest case in which a fairly satisfactory answer was given is the English case of Parker *v.* Kett. [2] In this case a steward *de facto* was declared to be "no other than he who has the reputation of being steward, and yet is not a good steward in point of law." The decision turned upon the fact that the as-

[1] (1871) 38 Conn. 449, 471.

[2] (1701) 1 Ld. Raymond, 658.

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sumption of the office had for so long a time been accepted by the public without dissent as to gain for the incumbent "the reputation of being steward." The test was whether the incumbent had a sufficiently general reputation of stewardship; if so, he was a *de facto* officer. The definition was reiterated a century later in the case of The King *v.* The Corporation of Bedford Level.[1] Here it was held, however, that a deputy could not acquire the reputation of being a principal; and the point was made that to be a *de facto* officer one must have "colorable authority" to the office in question. In almost all the later cases it is indicated that the touchstone for discovering who is a *de facto* officer is the determination of the degree of color of title possessed by the would-be officer. In every instance the officer is holding office without legal right, and the only question is whether he has sufficient color of title to the office and sufficiently general reputation of being an officer to render his title unimpeachable in collateral proceedings. If this question is answered in the affirmative, he is an officer *de facto*; if not, he is a mere intruder. This is what is known as the *de facto* rule.

The American courts have accepted and applied the English rule. They have cited with approval Lord Holt's definition in Parker *v.* Kett, as reaffirmed by Lord Ellenborough in The King *v.* The Corporation of Bedford Level. In the case of Worth *v.* Mattison,[2] Mr. Justice Daniel, rendering the opinion of the United States supreme court, said:

> The courts have concurred, it is believed, without an exception in defining "color of title" [to an office] to be that which in appearance is title, but which in reality is no title. They have equally concurred in attaching no exclusive or peculiar character or importance to the ground of the invalidity of an apparent or colorable title.

Again the federal court for the district of Oregon, after approving the English cases, said:

> Thus it will be seen that the almost unbroken current of authority is against the claim made for the petitioner that no one can be an officer *de facto* under a void law, or an illegal appointment; and admitting

[1] (1805) 6 East, 356. [2] (1855) 18 Howard, U. S. 50, 56.

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that the judges who tried and heard the action against the petitioner in the state courts were appointed judges of these courts under an unconstitutional act, yet they were at least such judges under color of right and authority, and they were and are . . . judges *de facto*, and their acts are valid and binding as to third persons. Color of title to an office is analogous to color of title to land. The latter does not mean a good title, or even a defective conveyance from one having title, but only the appearance of title, *i. e.* a deed to the premises in the due form of law.[1]

The same court also declared that an officer in office by color of right is an officer *de facto*; that his acts as such are valid and binding as to third persons; and that an unconstitutional act is sufficient to give such color to an appointment to office thereunder.

Thus it is seen that the courts of England and of the United States both lay down the rule that in determining whether a man is a usurper, whose official acts are absolutely null and void, or a *de facto* officer, whose acts have the force of *de jure* acts in all except direct proceedings, dependence is placed simply upon the sufficiency of the color of title to his office.[2]

II

On the other hand there are in the cases and in the text-books many definitions of *de facto* officers and statements based on such definitions which assume that there can be no *de facto* officer unless there is a *de jure* office. Judge Dillon goes the length of declaring:

In this country the doctrine is everywhere recognized that the acts of *de facto* officers as distinguished from the acts of mere usurpers are valid. But in order that there may be a *de facto* officer there must be a *de jure* office; and the notion that there can be a *de facto* office has been characterized as a political solecism without foundation in reason and without support in law; and therefore a person cannot claim to be a *de facto* officer of a municipal corporation where the corporation or

[1] *In re* Ah Lee (1880), 5 Fed. Rep. 899, 913.

[2] People *ex rel.* Kelly *v.* Common Council (1879), 77 N. Y. 503, 510; People *ex rel.* Howard *v.* Supervisors of Erie (1899), 42 App. Div. N. Y. 510, 514.

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people have, in law, no power, in any event, to elect or appoint such an officer.[1]

Whatever degree of consideration may be attached to these and similar statements, it is of course the decisions of the courts, and not the statements made concerning the grounds of such decisions, that make the law, and it is permissible to disregard such statements, even when made by the judges, in so far as they are inconsistent with or irrelevant to the decision of the points actually involved in the adjudications. Let us then examine the principal cases on this subject and find, if we can, exactly what they have decided.

The question whether there can be a *de facto* officer if there is no office *de jure* is one that does not easily arise except in a country governed by a written constitution; and for this reason we find few cases on the subject in the English reports. Whatever is declared by Parliament to be an office is of course a *de jure* office; and it is only where an office has not been created by Parliament that the question regarding its existence *de jure* can be presented to the courts. Such a case might arise in a manor, as did the case of Parker *v.* Kett. In this case Lord Holt held that although the office was defectively organized, still the stewards were to be considered stewards *de facto*. This decision, while directly in point, is not authoritative as regards the matter of unconstitutional offices in the United States. It is nevertheless useful as showing the trend of the common law.

Among the American cases in which it is asserted that there can be no *de facto* officer unless there be a *de jure* office there are but a scant half-dozen in which this question is really involved. The rest are decided on other grounds. In several of the leading cases it is intimated that all the earlier authorities, which seem to give support to the theory that there may be *de facto* officers without *de jure* offices, are not really in point, because they might have been decided without regard to this theory. But it seems to the writer that the boot may properly be put on the other leg. It is true that the earlier cases do not involve the point and therefore do not support the theory; but

[1] Dillon, Municipal Corporations, § 276.

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it is equally true that the great majority of the later cases in which the contrary theory is asserted do not turn upon the point in question and therefore give no support to this latter theory. If the theory advocated in the earlier cases is founded upon public necessity and convenience, and if this theory is not inconsistent with the later decisions, it may stand despite opposing dicta. It is submitted that upon the facts in each case and the disposal of the case by the courts all the decisions but one may be reconciled.

In dealing with the cases it will be advantageous first to note and set aside those in which there was found to be a *de jure* office, and then to collect and examine those in which there was none.

(1) To the first group belong Brown *v.* Lunt,[1] State *v.* Muir,[2] People *ex rel.* Ballou *v.* Bangs,[3] Brown *v.* O'Connell,[4] State *v.* Carroll,[5] *Ex parte* Strang,[6] Carleton *v.* People,[7] Samuels *v.* Drainage Commissioners,[8] Leach *v.* People,[9] Chicago and N. W. R. R. Company *v.* Langlade City[10] and *In re* Ah Lee.[11] These are frequently cited as leading authorities against the doctrine of the *de facto* office because of their strong declarations against it. On examination it will, however, be discovered that they are all cases of *de facto* officers wrongly holding an office of which the existence and the constitutionality are unquestioned. Accordingly all the statements made by the courts in these cases that there can never under a constitutional government be a *de facto* officer if there is no *de jure* office for him to occupy are irrelevant, because in each of these cases the decision is based on the fact that there is a *de jure* office. On any other theory some of these cases would stand for exactly the opposite: *i. e.* if it were not for the *de jure* character of the office, the *de facto* character of the officer could have been upheld upon the theory of his holding a *de facto* office.

The case of Nofire *v.* The United States [12] is valuable as showing how little is necessary in order to validate the acts of one il-

[1] (1854) 37 Me. 423. [2] (1855) 20 Mo. 303. [3] (1860) 24 Ill. 184.
[4] (1870) 36 Conn. 432. [5] (1871) 38 Conn. 449. [6] (1871) 21 Ohio St. 610.
[7] (1862) 10 Mich. 250. [8] (1888) 125 Ill. 536. [9] (1887) 122 Ill. 420.
[10] (1883) 56 Wisc. 614. [11] (1880) 5 Fed. Rep. 899. [12] (1897) 164 U. S. 657.

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legally in possession of a *de jure* office. It appeared that the appellants were indicted and tried in a circuit court of the United States for the murder of one Rutherford, and that they were found guilty. They claimed that under the treaty between the United States and the Cherokee Indian nation they had the right to be tried by that nation for the murder of an Indian, and they asserted that Rutherford was an Indian by adoption. The case turned on the question whether Rutherford was an Indian. It seems that in order to become by adoption a citizen of the Cherokee nation all that is necessary is to marry a Cherokee woman. This is done according to Cherokee law by getting a marriage license from the clerk of the nation. The appellants showed that Rutherford had obtained a marriage license from one Dannenburg, who had no legal connection with the office of clerk. For a year or more, however, this Dannenberg had been doing odd jobs about the office, aiding the clerk and his deputy in their work, and all his acts as assistant to the clerk had been acquiesced in by the Cherokees. The supreme court held that the license was free from collateral attack, on the ground that Dannenberg was a *de facto* officer.

> He was permitted by the clerk and the deputy to sign their names; he was the only person in charge of the office; he transacted the business of the office, and his acts in their behalf and in the discharge of the duties of the office were recognized by them and also by the Cherokee Nation as valid. Under those circumstances his acts must be taken as official acts, and the license which he issued of full legal force. As to third parties at least he was an officer *de facto*.[1]

Thus the court holds, in effect, that one who enters upon the duties of a *de jure* office, with acquiescence on the part of the public, is, to persons coming to such public office to transact business in the regular way, a *de facto* officer. In such cases color of title seems to be unnecessary if the pseudo-officer is generally recognized as an officer.

(2) When we pass from this group of cases, in which there was a *de jure* office, to the cases in which there was no office *de*

[1] 164 U. S. 661.

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jure and in which it was held that the pseudo-officer was not a *de facto* officer, we find that in almost every case—to be precise, in every case but one—the occupancy of the illegal office was without color of title. In almost every case the office was created by a statute which was ineffective on its face, either by reason of an express constitutional prohibition or because it was obvious that no power existed to create any such office, or the office was on its face illegal under the general laws of the state. Under such circumstances it may be granted that there could be no *de facto* officer, on the simple ground that the person occupying such an office had no color of title.

On the other hand we find a further group of cases in which, although the office did not exist *de jure*, the statute creating the office was not on its face unconstitutional or obviously *ultra vires* of the legislature; and in these cases the occupant of the illegal office was recognized as a *de facto* officer.

Such being the decisions, it seems, advisable to consider, first of all, what is meant by color of title, and when an officer claiming under some sort of title has been considered by the courts to be a mere usurper.

The case of Hildreth's Heirs *v.* McIntire's Devisees [1] arose in Kentucky in 1829. It seems that according to the state constitution there was to be but one court of appeals in Kentucky. The legislature passed an act attempting to abolish the court of appeals ordained and established by the constitution and to create in its stead a new court. This attempt was, of course, ineffectual for want of legislatve power. As the court said:

> The offices attempted to be created never had a constitutional existence; those who claimed them had no rightful or legal power . . . Their tribunal claimed to derive its origin from the fiat of the legislature. The court of appeals had not been and could not be abolished. Its judges had not been removed from office, and were acting and ready to continue acting as judges.

This decision is directly in accord with the older theory. There was here no color of title. The constitution clearly said that there should be but one one court of appeals. This legal court

[1] (1829) 1 J. J. Marshall, 206, 208.

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of appeals was in actual existence when the legislature, without a shadow of right, tried to set up a court of its own. An illegality so patent as this could confer upon persons appointed to the new court no semblance of title. No other decision than that which was rendered is conceivable. But the Kentucky court, after disposing of the case correctly, went on to deliver itself of a statement which can only be considered as dictum, but which must be inserted here, as it is one of the sheet-anchors of the opposing theory.

> There can not be more than one court of appeals in Kentucky as long as the constitution shall exist, and that must necessarily be a court *de jure*. When the government is entirely revolutionized and all its departments usurped by force or the voice of a majority, then prudence recommends, and necessity enforces obedience to the authority of those who may act as the public functionaries; and in such a case, the acts of a *de facto* executive, of a *de facto* judiciary or of a *de facto* legislature must be recognized as valid. But this is required by political necessity . . . But when the constitution or form of law remains unaltered and supreme, there can be no *de facto* department or *de facto* office. The acts of incumbents of such departments or office . . . can be regarded as valid only when the government is overturned. When there is a constitutional executive and legislature, there cannot be any other than a constitutional judiciary. Without a total revolution there can be no such political solecism in Kentucky as a *de facto* court of appeals. There can be no such court whilst the constitution has life and power. There has been none such. There might be under our constitution and there have been *de facto* officers. But there never was and never can be under the present constitution, a *de facto* office.

All the above is mere dictum, as the case falls within the older doctrine and was decided substantially in accordance therewith.

Cases that belong in this second group are those of Town of Decorah *v.* Bullis,[1] State *v.* McFarland,[2] *Ex parte* Babe Snyder,[3] State *v.* O'Brien,[4] Reddy *v.* Tinkum,[5] *In re* Hinkle,[6] Matter of Quinn,[7] and People *ex. rel.* Baldwin *v.* McAdoo.[8]

[1] (1868) 25 Iowa 12.
[2] (1873) 25 La. Ann. 547.
[3] (1876) 64 Mo. 58.
[4] (1878) 68 Mo. 153.
[5] (1882) 60 Cal. 458.
[6] (1884) 31 Kan. 712.
[7] (1897) 152 N. Y. 89, 93.
[8] (1905) 110 App. Div. N. Y. 432, 436.

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They all state with various degrees of emphasis that there can be no such thing as a *de facto* office; but in each of these cases the statement is again merely *obiter*, because the same decision would be reached under the theory supported in this paper, inasmuch as there was no semblance or color of authority for the creation of the office in question, and therefore it could, of course, not be *de facto*. These cases are distinguishable because either the legislature had assumed to do some act clearly *ultra vires* or on its face contrary to the terms of the constitution, or the office had been abolished or expressly limited or prohibited by act of the legislature, or the legislature had expressly declared that an act creating an office was not to be applicable to such a case as that in question. In none of these cases, accordingly, was there any color of authority for the existence of the alleged office.

The most notable dictum on this point, however, is to be found in the case of Norton *v.* Shelby County.[1] This case has been very generally misunderstood, in spite of the fact that it was freely criticised, six years later, in a circuit court decision.[2] The facts in the Shelby County case were as follows. By the constitution of Tennessee there was, in each county, but one county court. This was composed of the justices of the peace elected in their respective districts in the county. Under the act of March 9, 1867, the governor was given power to appoint county commissioners who were to take the place of this court. The county court was one of the institutions recognized in the constitution of the state. County commissioners were authorities unknown to the constitution and previously unknown to the law of Tennessee. There was no general acquiescence in the change nor any general recognition of the new commissioners. On the contrary, the validity of the act was at once assailed. Within a month after its passage, a bill was brought against the commissioners, and public opposition continued in various forms until the case was finally settled. While litigation to test their authority was pending the commissioners issued county bonds to the amount of $29,000 and the liability of the county on

[1] (1886) 118 U. S. 425. [2] Comstock *v.* Tracey (1891), 46 Fed. Rep. 162.

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these bonds became a further subject of controversy. It was held that the commissioners were not *de facto* officers, and that their right to hold the office in question could be attacked collaterally in the suit upon the bonds. It will be seen at once that this case not only does not conflict with the rule supported in this essay, but is fully in accordance with it. There was here no color of title to the office. The act purporting to create the office of commissioner was clearly and on its face contrary to the constitution, as the Tennessee case of Pope *v.* Phifer[1] shows; indeed, it was so clearly unconstitutional that legal measures were taken against the bonds of the appointees within one month after the passage of the act. The opinion of the court, delivered by Mr. Justice Field, says, however:

> But it is contended that if the act creating the board was void, and the commissioners were not officers *de jure*, they were nevertheless officers *de facto*, and that the acts of the board as a *de facto* court are binding on the county. This contention is met by the fact that there can be no officer, either *de jure* or *de facto*, if there be no office to fill. As the act attempting to create the office of commissioner never became a law, the office never came into existence. Some persons pretended that they held the office, but the law never recognized their pretensions . . . and the commissioners were held to be usurpers. The doctrine which gives validity to the acts of officers *de facto*, whatever defects there may be in the legality of their appointment or election, is founded upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices and in the apparent possession of their powers and functions. For the good order and peace of society their authority is to be respected and obeyed until in some regular mode prescribed by law their title is investigated and determined. It is manifest that endless confusion would result if in every proceeding before such officers their title could be in question. But the idea of an officer implies the existence of an office which he holds. It would be a misapplication of terms to call one an officer who holds no office, and a public office can exist only by force of law. This seems to us so obvious that we would

[1] (1871) 3 Heiskell, 682.

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hardly feel called upon to consider adverse opinion on the subject, but for the earnest contention of plaintiff's counsel that such existence is not essential, and that it is sufficient if the office be provided for by any legislative enactment, however invalid. Their position is that a legislative act, though unconstitutional, may in terms create an office, and nothing further than its apparent existence is necessary to give validity to the acts of its assumed incumbent. That position, although not stated in this broad form, amounts to nothing else. It is difficult to meet it by any argument beyond this statement. An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation as inoperative as though it had never been passed.[1]

The court, it seems, goes too far in disagreeing with the view which it opposes. Of course it is clear that it is not merely because of the fiat or declaration of the legislature that the acts of a claimant to office acquire validity; but it is not necessary, in order to disagree with this view, to hold that an unconstitutional act has no validity at all, no matter what the act may be nor how its unconstitutionality arises. In this case the powers and functions sought to be conferred upon new officers were already vested, in accordance with the constitution and the laws, in other hands long recognized and competent, which would be deprived of authority if the acts of the claimants were to be declared valid for the time in which they were in office. While the case before the court was properly decided, the reasoning upon which the decision was based would lead, in cases where the unconstitutionality of a legislative act was not evident, to inequitable results. The broader theory, holding that if there is sufficient color of authority in the legislative act it will protect the incumbent as a *de facto* officer, seems to furnish a fairer rule. In Justice Field's reasoning the principles underlying the *de facto* doctrine are misconceived. This was recognized, some years later, by an inferior branch of the same court. While the circuit court, in Comstock *v.* Tracey,[2] refused to hold *contra* to the decision of the supreme court in the Shelby County case, it took exception to parts of the opinion. Quoting

[1] 118 U. S. 441, 442. [2] (1891) 46 Fed. Rep. 162.

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Justice Field's statement that "the acts of one filling a *de facto* office have no validity at all in law," Judge Thomas said: "That question is not here necessarily involved, and I do not pass upon that question."

All the leading cases in which it is asserted that there can be no *de facto* officer unless there is a *de jure* office for him to fill have now been considered; and in every case[1] in which this assertion is made it has been shown either that the point was not involved, because the office was actually existing *de jure*, or that the consideration of this point was unnecessary, because the decision could have been based on the rule that a *de facto* officer must have color of title.

(3) A third and distinct group of decisions is found in cases where there is no constitutional office in existence, but where the officer is protected both from collateral and from direct attack on the ground that his office is part of a municipal organization which is in existence unattacked by the state.[2] The courts have repeatedly refused to permit the *de jure* character of any municipal corporation to be questioned through collateral attacks upon its officers, and have sheltered such officers behind the *de facto* rule. They declare the existence of municipal corporations to be unimpeachable in all collateral suits and open to attack only in *quo warranto* proceedings brought in behalf of the state. Steelman *v.* Vickers[3] is a typical example of the operation of the *de facto* rule in this class of cases. It appeared, in this case, that a municipal corporation was created by methods not conforming to the ordinary statutory requirements and by an act which was unconstitutional. The action was on a writ of *quo warranto* brought by a private person against an officer of the corporation because of irregularities in the defendant's title to office. The court held that the office of a *de facto* municipality could not be ousted on the ground that the corporation

[1] Except Flaucher *v.* Camden (1893), 56 N. J. L. 244, which is discussed *infra*.

[2] See State *v.* Stevens (1878), 21 Kansas, 210; Trumbo *v.* People (1874), 75 Ill. 561; Merchants National Bank *v.* McKinney (1891), 2 So. Dakota, 106; Comanche County *v.* Lewis (1888), 35 Fed. Rep. 343; affirmed (1889), 133 U. S. 196.

[3] (1889) 51 N. J. L. 180, 181.

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had no legal existence. This latter question, it was said, cannot be raised by a private person, directly or indirectly, but only by the attorney-general:

> [Private persons can not] call into question the existence of one of these bodies that are public corporations *de facto* if not *de jure*. Such an endeavor is obviously possessed of all the impolicy that forms the basis of the prohibition alluded to; for that basis is that it is highly inexpedient that these municipalities, being the depositories of a part of the governmental power of the state, should have their very being put at hazard whenever any member of the community sees fit to make the assault. Being public institutions it was determined that their existence was not to be challenged except by the state through its attorney-general, he acting *ex officio* as the representative of the public, and that in such a procedure his name could not be used *pro forma* by a private relator.

Were such attacks allowed, one officer after another might be removed on private initiative, and the municipality might be left without any officers. This would be practically a dissolution of the municipal corporation; and since the legal existence of municipal corporations may not be directly attacked by individuals, it is not admissible that their existence should be indirectly threatened by private attacks upon the title of their officers. It follows that all the officers of a *de facto* municipal corporation are deemed to be in possession of *de jure* offices and are not removable by any other means than by proceedings brought in behalf of the state against the corporation itself. But the conclusion derived from this class of cases is to be strictly confined to offices in a *de facto* local corporation.

(4) Before turning to the cases in which the broader doctrine is expressly affirmed, we may consider a Pennsylvania case, Campbell *v.* Commonwealth,[1] in which it seems to have been applied. In the court of Fayette county, two associate judges, not learned in the law, sat with the presiding judge and participated in the trial and sentence of three persons for arson. They were elected and commissioned as associate judges. It was objected in 1879

[1] (1880) 96 Pa. St. 344, 347.

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against the validity of the conviction that there was no power under the constitution to elect associate judges, though this power had existed prior to 1874. It was held, however, that the associate judges were officers *de facto*. The court said:

> Under due forms of law they hold their offices by title regular on its face. They are performing the duties thereby imposed on them and enjoying the profits and emoluments thereof. Thus they are judges *de facto*, and as against all parties but the commonwealth they are judges *de jure*. Having at least a colorable title to these offices, their right thereto cannot be questioned in any other form than by *quo warranto* at the suit of the commonwealth.

Inasmuch as it is here affirmed that, irrespective of the constitutional existence of the offices to which they were chosen, these judges, having color of title, were *de facto* officers, this case seems directly in point. In support of its position the court cited the case of Clark *v.* Commonwealth.[1]

In the case Adams *v.* Lindell, [2] which arose in 1878 in Missouri, it was held that the rule supporting the acts of *de facto* officers was one of policy, and that it might be applied although the office itself had legally ceased to exist. When the fact that an office had been abolished remained unknown, owing to an erroneous announcement in the election returns, and the person occupying the office was not a mere usurper but held under such color of right as to justify men in concluding that he was an officer, the acts of such person, done after the abolition of the office but before the fact of its abolition was known, might be treated as valid for the purpose of supporting contracts made with him as an officer. This decision was fully approved by the supreme court of Missouri. The same decision was reached on a very similar set of facts in the case of Simpson *v.* McGonegal.[3]

A similar decision was rendered in Minnesota. It seems that in 1881 a bill presented to the legislature of Minnesota was enrolled, voted on, signed by the presiding officer of each house, approved by the governor and promulgated with the other laws

[1] (1858) 5 Casey, 29 Pa. St. 129.

[2] (1878) 5 Mo. App. 197; approved (1880), 72 Mo. 198.

[3] (1893) 52 Mo. App. 540.

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of the session. After a lapse of two years it was discovered from an examination of the journals of the legislature that this law did not have a two-thirds vote in each house, as required by the constitution. In the case of State *v.* Gould[1] the law was accordingly declared void. The case of Burt *v.* Winona *etc.* Railway Company first arose and was decided in the court of Mankato, which court was established by this invalid act of 1881. The attempt was made to disaffirm the judgment of the Mankato court on the ground that this court, being established by a void law, was without jurisdiction. It was however held by the supreme court of Minnesota[2] that the law was *prima facie* valid and that the court created by it was *prima facie* legal. The supreme court said:

> There may be *de facto* courts or officers, the legality of whose existence cannot be questioned except in a direct proceeding by the state for that purpose. [The court determines] to lay down this proposition, that where a court or office has been established by an act of the legislature apparently valid, and the court has gone into operation or the office is filled and exercised under such act, it is to be regarded as a *de facto* court or office, in other words, that the people shall not be made to suffer because misled by the apparent legality of such public institutions.

The decision is based on authorities cited, on the general principle of upholding the acts of persons who are regarded as public officers and are exercising public powers, and on "the great public mischief that might sometimes arise but for the application of the rule to courts." The case illustrates the point that the considerations of public policy which have led to the recognition of *de facto* officers lead also to the recognition of *de facto* offices.

This case was closely followed, in 1891, by the federal circuit court for the southern district of Minnesota, in Comstock *v.* Tracey.[3] The federal court decided that where an act purporting to establish a court of common pleas of Hennepin county had been duly enrolled, signed by the presiding officers of each house, approved by the governor and promulgated with the

[1] (1883) 31 Minn. 189.
[2] (1884) 31 Minn. 472, 477.
[3] (1891) 46 Fed. Rep. 162.

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other laws of the session, and was thus valid on its face, the court would presume that it was legally enacted and would not, in a collateral proceeding in which the validity of a judgment in the Hennepin county court was questioned, resort to the journals of the two houses to ascertain whether the act had obtained the two-thirds vote required by the constitution. In this case the court followed the rule laid down in Norton *v.* Shelby County,[1] that a federal court must follow state decisions relating to rules of property and matters of local concern, but it refused to accept the opinion expressed in this case that "there can be no officer, either *de jure* or *de facto*, if there be no office to fill," saying that this latter question was not involved, since the case at bar was governed by the rule of following the state adjudications. In effect, the decision is in accord with the broader doctrine and is in conflict with the dictum of Mr. Justice Field.

In the case of State *v.* Gardner,[2] the defendant was indicted for attempting to bribe a city commissioner of Akron. The defendant demurred to the indictment on the ground that it was based upon a statute declaring it to be a crime to attempt to bribe any municipal officer, and that the city commissioner was not an officer because the act creating the office of city commissioner was unconstitutional. It was decided that the constitutionality of the act creating the office could not be brought into question collaterally in any such proceeding as was then before the court. In this case the act had been in force for over three years and had never before been questioned; and it would have been impracticable and against public policy to allow it to be impeached collaterally after this acquiescence on the part of the public. The court pointed out that the rule as to *de facto* officers was never one of logic, but always depended upon necessity and the protection of the public. One passage is particularly worth quoting:

> We think that that principle of public policy, declared by the English courts, three centuries ago, which gave validity to the official acts of persons who intruded themselves into an office to which they had not been legally appointed, is as applicable to the conditions now presented

[1] (1886) 118 U. S. 425.

[2] (1893) 54 Ohio St. 24, 33, 49.

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as it was to the conditions that then confronted the English judiciary. We are not required to find a name by which officers are to be known, who have acted under a statute that has been subsequently declared unconstitutional, though we think such officers might aptly be called "*de facto* officers." They actually performed official acts authorized by a statute solemnly enacted by the law-making department of the government. Such a statute is presumed to be constitutional . . . Courts in the practical administration of justice should regard the substance of things, and deal with the conditions as they actually exist. Here are grave and important official acts, actually performed by virtue of an office created under the provisions of a statute regularly enacted by the branch of the government to which the power to make law has been delegated by the constitution; there is a clearly established legal presumption of its validity. The public in its organized capacity, as well as private citizens, has acquiesced in and submitted to their authority. Such circumstances are sufficient to give such color to their title as to make them *de facto* officers; but whether they fall within the previously existing definition of such officers or not, their official acts thus performed fall within the protection of that principle of public policy which defends them against collateral attack, and therefore the question of the constitutionality of the statute in question was not before the court of common pleas.

After alluding to the case of Norton *v.* Shelby County and distinguishing that case from the present, Judge Spear, in a concurring opinion, goes on to say:

It is sought to dispose of this case by use of the phrase that there can be no officer *de facto* unless there is an office to fill. The proposition begs the question. The obvious answer is that there is an office to fill whenever our law-making power, exercising its authority to create a constitutional office, by a duly enacted and promulgated statute, ordains that there shall be such office, and it remains an office until the act is repealed or held unconstitutional by a court of competent authority in a proceeding in which the one holding the office is a party, who in the meantime, his election or appointment being regular, and the public acquiescing in his discharge of the duties, is an officer whose title can be questioned only by the state itself.

The conclusion to be drawn from this fourth group of cases —a conclusion with which none of the decisions previously

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noted is in conflict—is that where there is no *de jure* office, there may be a *de facto* officer, in the sense that his acts cannot be questioned collaterally, if the incumbent enters under sufficient color of title, as for example, under an act of the legislature which is not clearly on its face unconstitutional in the manner of creating the office or in the method of filling it. Perhaps a further condition should be added, *viz.* acquiescence by the public; for if there be no public acquiescence in the officer's assumption of authority, if on the contrary the question of the validity of his tenure be promptly raised, this will furnish very strong evidence that the unconstitutional act was on its face unconstitutional, and the courts may well consider such evidence conclusive. The contention that in the absence of a *de jure* title to office public acquiescence is necessary to make the incumbent a *de facto* officer has at least this much negative support, *viz.* that no case has been found upholding the acts of such an incumbent without public acquiescence for some length of time. But since, conversely, in no reported case does it appear that public acquiescence was lacking when an incumbent assumed office under a legislative act not on its face unconstitutional, the question has not been squarely presented to the courts.

Before concluding this examination of the cases it is necessary to advert for a moment to the single case which seems irreconcilable with the broader rule. This the case of Flaucher *v.* Camden, decided in the New Jersey supreme court.[1] It appears that Flaucher was convicted by the police judge of Camden on a charge of selling liquor without a license. Flaucher had a certificate granted by the county board of license commissioners of Camden county. If this was valid, Flaucher was illegally convicted. The board was created by an act of legislature which, not long before Flaucher's conviction, was declared to be unconstitutional. The question was whether a license granted by the board established by that act could be invoked for any purpose. Flaucher insisted that the commissioners were *de facto* officers at the time the license was granted, and

[1] (1893) 56 N. J. L. 244.

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that their act was therefore valid in respect to the public and to third persons. The court held, however, that "an office created by an unconstitutional statute can afford no support to the acts of its incumbents. The board of license commissioners was a new and distinct body, and when its official existence is wiped out, there is no official support for the licenses granted by its incumbents." The court makes a distinction between unconstitutionality as to the method of filling an already existing office and unconstitutionality in regard to the creation of a new office. In the latter case, however, it affirms that the incumbent of the supposed office can not be a *de facto* officer. To the writer the decision in this case seems distinctly inequitable, since Flaucher acted in conformity with what appeared to be the law and was entitled to suppose his license valid; and the fact that the principle on which this decision is based would necessarily involve a similarly unsatisfactory result in all similar cases appears to be a valid argument against the correctness of the principle.

As regards the question: What constitutes a *de facto* officer when there is no office *de jure* for him to fill? it may be conceded that no hard and fast rule can be laid down. It is a question of color of legal authority and of the degree of color; and such questions are questions of fact in each particular case.

The results reached in the foregoing examination of cases may be summed up as follows:

(1) If there is a *de jure* office in existence, anyone (*a*) who enters on such office with color of title as to his appointment or election, or (*b*) who enters, acts as officer and is recognized as such by the public, is a *de facto* officer. In this class of cases the legal existence of the office confers color of title upon anyone who has the recognition and acquiescence of the public.

(2) If there be no office in existence *de jure*, and the claimant enters with no color of title, under an act of the legislature which is on its face clearly unconstitutional, he is not a *de facto* officer but a mere usurper.

(3) If there be no *de jure* office, and the incumbent enters under an unconstitutional act of the legislature, but one which is not clearly and on its face unconstitutional, and if such in-

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cumbent does not otherwise lack color of title, he is a *de facto* officer. Acquiescence on the part of the public may, perhaps, be an additional requisite.

Contra: the single case of Flaucher *v.* Camden, and a strong current of dicta.

(4) The officers of *de facto* municipal corporations are in a distinct class, and so long as the state itself does not attack their title, they are treated as *de jure* officers.

III

The basis upon which the recognition of *de facto* officers has always rested is the necessity of protecting the public in dealing with persons acting as public officers. The recognition is carried no further than the public interest requires; *de facto* officers are not permitted to build up any rights for themselves, such as a right to compensation for work done in the office.[1] Conversely, however, the recognition should be accorded whenever it is necessary for the protection of the public. There seems accordingly to be no sound reason for the distinction drawn by the New Jersey courts, upholding the acts of the unlawful incumbent when the office is constitutionally created but invalidating his acts as those of an intruder when the office is found to be unconstitutional. The public interests which require the validation of the acts of the unlawful incumbent are in both cases the same. Why, then, should not the courts recognize *de facto* office, when such recognition is necessary to uphold the acts of the officer, as readily as they recognize the *de facto* officer in illegal possession of a *de jure* office? In Burt *v.* Winona *etc.* Railway Company,[2] the Minnesota court did not hesitate to take this position. The court said:

> Taking even the narrowest definition of an officer *de facto*, *viz.* that he is one who is exercising the duties of an office under color of legal right to the office, the reasons that justify the doctrine apply with equal force to a court or office where the same may be said to exist under color of right, that is, under color of law.

[1] Dolan *v.* Mayor (1877), 68 N. Y. 274. [2] (1884) 31 Minn. 47.

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In either case, of course, the *de facto* doctrine sets up a legal fiction; but the fiction is as useful, not to say necessary, in the one case as in the other.

If we transfer the discussion from the field of expediency to that of logic, the advocates of the narrower doctrine are in no better case. To restrict the recognition of a *de facto* officer to instances in which a constitutionally created office exists is to draw a distinction which seems logically untenable. If an "unconstitutional law can confer no authority and create no rights," how can an unconstitutional law which provides for filling an office confer validity upon the acts of the incumbent? It is quite as much of a "political solecism" to uphold the acts of one who unconstitutionally intrudes himself into a legally existing office as to validate the acts of an alleged officer who was duly appointed or elected to a new office established by a legislative act which failed of passage by a few votes—which fact did not appear at the time—and who, under this act, held office with public approbation for several years.

The restriction which has always been imposed as regards the recognition of *de facto* officers, *viz.* that the incumbent must not be a mere usurper without color of authority, rests upon the same basis upon which recognition rests, *viz.* public policy. There is every reason why the public should put confidence in those persons who have colorable authority; there is no reason why the public should put its confidence in persons who are manifestly without authority. To apply the older and broader doctrine to the office as well as to the officer, to say that the public is entitled to assume that an office exists when it is established under color of law, is a direct development of the original doctrine. This argument is so well put by a Missouri court, in an early case to which reference has already been made,[1] that a short quotation from the opinion is in point. The court argues as follows:

> Where the office legally exists and the officer is merely a *de facto* officer, there is a violation of law. The officer not being legally such, his

[1] Adams *v.* Lindell (1878), 5 Mo. App. 197.

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acts are, apart from the principles of validation, of no legal effect; but if to this state of things we superadd the element of non-existence of the office, what essential difference can this make? The question is as to the validity of the acts of a certain man, claiming to be a public officer. If these acts are invalid they certainly cannot be made more invalid by the addition of another quantity. "Contrary to law" and "invalid" do not admit of degrees of comparison. The act of the so-called officer being thus contrary to law, as he has no right to the office, the *de facto* principle is applied; thus an otherwise void act is validated, not because of any character or quality attached to the so-called officer or his office, but because this is necessary to preserve the rights of third persons and keep up the organization of society. The rule is based merely on policy, and its origin and historical development show that it is founded in comparative necessity . . . It is evident that the necessity which creates the rule of validation may exist in precisely the same way and degree where there is no legal office as where there is merely no legal officer; and it is further evident that to apply the principle to cases where there is no legal office is taking no new or further step; for, as above said, the act being already invalid, it cannot be any more invalid where there is no legal office. Why, then, should the rule suddenly halt when both logic and necessity require it to proceed?

The acts of a mere usurper are not validated, for the "apparent circumstance of color or reputation leading men to suppose he is a legal officer does not exist."[1]

The reason for upholding the acts of *de facto* officers is accordingly extra-legal: the rule is *contra tenorem juris*. The *de facto* officer, according to the ancient definition of the English law, was an incumbent not legally qualified. There was a flaw in his title. The English courts on grounds of public necessity gave validity to the official acts of men who intruded themselves into offices by methods not in accordance with the law. It is submitted that the same principle should be applied to-day as regards persons who act as officers and in whose title to office there is some flaw, no matter if the flaw be in the method of creating the office. It seems that on grounds of public policy the acts of such officers should be safe from collateral attack,

[1] 5 Mo. App. 202.

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irrespective of the question whether they come strictly within the class of persons who were at first described as *de facto* officers.[1]

It seems that the grounds on which a man without legal qualification is held to be a *de facto* officer, if he has sufficient color of title, may with equal logic and justice be invoked as regards the office itself. If only there be sufficient color of law, the office may be considered a *de facto* office, and an appointment or election to such an office under sufficient color of title may be held valid as to third persons and the public and unassailable in collateral proceedings. This view is, as we have seen, fully supported by the cases, which fall readily into the four classes distinguished above. From these cases it is clear that where an incumbent enters under a legislative act which is *on its face* clearly unconstitutional, he is not a *de facto* officer, but a mere intruder and usurper, without color of authority. Where, on the other hand, color of authority exists, it seems impossible to deny, either upon principle or upon the authority of decided cases, that there may be a *de facto* officer even in the absence of a *de jure* office.

K. RICHARD WALLACH.

NEW YORK CITY.

[1] Simpson *v.* McGonegal (1893), 52 Mo. App. 540, 547.

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THE EDUCATION OF VOTERS

WHERE the suffrage is as widely extended as it is in the United States, and where the absolute dependence of successful government upon the intelligence of the voter is so clearly recognized as it is with us, it is strange that so few of our states have been in the least concerned to assure themselves that the voter, before he comes to the polls, shall have had an opportunity to form a candid opinion upon the issues which he is there to determine. True, a dozen or more of our states do insist that the voter shall be able to read and write the English language, and shall thus be in a position to inform himself regarding matters of political controversy. The heavy burden of his schooling is borne, and the educational test for the suffrage is exacted, in order that the welfare of the state may not be endangered by the vote of an illiterate. But suppose that, as in Massachusetts, the candidate for registration does read glibly the five lines of the constitution upon the card which he draws from the lottery-box; or suppose that, as in Mississippi, he proves that he can read any section of the constitution of the state, or can "understand the same when read to him; or give a reasonable interpretation thereof"[1]—a phrase which, like charity, covereth a multitude of sins,—the question remains: Has the state's duty, not to the voter but to itself, been thus fulfilled; or are these but preliminaries to a further step in the voter's education, without which this alleged training for citizenship in the work of the schools and this educational test are likely to prove barren of direct and beneficial results, so far as the attainment of better government is concerned? For Carlyle's dreary question ever recurs: "If of ten men nine are recognizable as fools, which is a common calculation, how in the name of wonder will you ever get a ballot-box to grind you out a wisdom from the votes of these ten men?" We resent the word

[1] Mississippi, Constitution, 1890, sec. 244.

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"fools," but shall we deny that the great majority of us, when we go to the polls, have altogether inadequate information for forming a just opinion upon the men and measures there presented for our suffrage? Selective judgment, independence in forming an opinion—these are the things upon which a sound faith in the rule of the majority must be based. Has the state no further concern in seeing that the data for that judgment are provided than is involved in insisting that the voter shall be able to read? Is it to be taken for granted that he has enough interest to do any reading at all on matters political? It is commonly assumed that, in a heated campaign, the average voter will "keep in touch"—a very fitting phrase—with the questions of the day. But in every state there are thousands of voters who read no newspapers regularly, whose circumstances and associations are such that they have little opportunity to read or hear any informing discussion, and who come to the polls with but the haziest notions as to what the election is all about.

And if the voter, trained in the costly public schools, can and does read, there remains the disquieting question: What does he read? The average citizen reads the one paper which best accords with his own views. The Democrat sees much in his paper in denunciation of "the big stick," but little about the growing effectiveness of governmental control of railways and trusts; the Prohibitionist finds in his journal plenty of statistics as to the license vote and the evils of the saloon, but little candid discussion of the army canteen or of the Gothenburg system; the Republican reads panegyrics of his party and is exhorted to "stand pat." The newspaper may assume to be independent; it may claim to print all the news; but the editor decides all questions of space and of position, selects the headlines and provides the comment. The emphasis is on one side of the question, and on that side to which the regular reader is already committed; so that, for the forming of a sound and candid public opinion, there is here altogether too much in-breeding. Yet it is hardly to be expected that one voter in ten will take the pains to secure different journals, or will find the time to consider, with equal attention, the case for and against a given candidate or measure.

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The question of bringing the voter's education to a focus becomes all the more important in view of the rapid extension of the movement toward direct legislation. The voter has no longer merely to choose between candidates and to ratify or reject amendments to the constitution: the initiation of sweeping changes in constitutional law and the decision of the most intricate questions as to finance and the control of corporations are being transferred from the legislatures to the voting booths. The average voter, who there makes law, has attended no committee hearings; he has listened to no searching debate between hard-hitting opponents; at the best he may have read two or three different papers, at the worst he has not even read his own. The advocates of direct legislation insist that every referendum and initiative vote is educative; and so it is. It provokes some discussion; but in that discussion the chances are that but one side will be fully presented. The state, the body most vitally interested, declines to have any connection with the contest, even to the extent of seeing that each of the contestants has a fair hearing. The voter is left to the mercy of any interested party who may get his ear. "Oh, he'll find out what he needs to know, somehow!" seems to be the attitude of the state—as it is of most parents in regard to some of the things which no school teaches but which it is most essential that their children shall know. Public-spirited citizens or associations may for a time attempt to set forth the records of candidates or to present the "right" side of some burning issue, but the party machine is equally active, and its activity is more persistent. Can the state content itself with leaving to such agencies as these all the direct preparation which the citizen is to receive for a specific voting task?

These questions are suggested by certain unique features of two laws which have recently come forth from one of America's most enterprising political experiment-stations, the state of Oregon.

I.

The first of these laws—the new law regulating primary elections[1]—is intended to secure for the voter information as to the

[1] Act of June 24, 1904, sec. 13. This act was proposed by the people by initiative petition and was approved by a vote of 43,316 : 40,198.

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political aims and principles of the men for whom his suffrage is asked. The information is to be given by the would-be candidates themselves. Each man seeking nomination for office, from that of governor down to that of county clerk, in order to get his name upon the nominating ballot, must sign and file with the proper official a petition stating his residence, declaring himself to be a registered voter of the specified party, and pledging himself that, if nominated, he will accept the nomination and not withdraw, and that, if elected, he will qualify as such officer. Then follows, in the model petition set forth in this statute, the section which constitutes its unique feature:

> If I am nominated and elected, I will during the term of my office (here the candidate, in not exceeding one hundred words, may state any measures or principles he especially advocates, and the form in which he wishes it printed after his name on the nominating ballot, in not exceeding twelve words).[1]

Every candidate is thus made the builder of his own platform. Now platform-building, as the committee on resolutions of many a political convention will sadly testify, requires delicate carpentry; yet this law takes the job away from the political carpenters' union and turns it over to any candidate who can wield a hammer and saw wood. But let this non-union laborer rejoice with trembling and build with care; for if his planks be too wide or too narrow, if they be ill-matched or not securely spiked down, he must lay the blame of his downfall not to the work of others but to the unstable footing erected by his own unskilled hands. And if the making of a platform is difficult and fraught with dangers, what shall be said of an attempt to compress the platform into the dimensions of a foot-stool? Who has not wrestled over the phrasing of a telegram, because only ten words will go for a quarter? The Oregon aspirant for office is limited to twelve words, and in this compass he must indicate his political creed, his favorite policy or his scheme of patriotic service. He must try to find for his platformette a phrase which shall serve as the rallying cry of his campaign,

[1] Laws 1905, ch. 1, p. 18.

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and which can not be turned against its author; for what shall it avail him to fire a shot heard 'round the state if his projectile prove of the boomerang order!

It is not surprising that many an aspirant abandons the attempt to reveal himself to the public, and contents himself with proving his political orthodoxy by a quotation from the law-givers or prophets of his party. There lies before me the ballot used at the nominating election, April 20, 1906. A candidate for governor illumines the space after his name on the ballot with: "Government of the people, by the people, and for the people.—Lincoln." A would-be United States senator promises: "I will support President Roosevelt's determination that justice be done all men." A candidate for the state legislature proclaims: "No bosses, no graft, equal taxation, and a square deal to all." Some essay the broadly epigrammatic: "A greater Oregon"; "No interests to serve but the public interests"; "The commissioner of the whole people, for the whole county." An aspirant for the treasurership, who aims at the concrete, approaches the telegraphic form in declaring: "Favors rigid economy in state institutions, bank examiner, tax franchises and corporations." A man who is willing to undertake the state's printing: "Pledges economical business administration; square deal for tax-payers; no deals with bosses." Candidates for sheriffs and county recorders promise: "Efficiency and economy"; while one seeking a county clerkship diplomatically suggests: "Honesty, efficiency, courtesy." A majority of those then seeking nomination left vacant the spaces allotted for their platformettes, apparently in the hope that the people would accept the doctrine: "Speech is silver, silence golden." This seems to have been a mistaken policy; for most of the candidates who were successful in the ensuing general election had made some effort to indicate on the nominating ballot their positions or policies.

[1] That Oregon is not content with making available to the voter this modicum of information in regard to candidates is indicated by certain proposals in a measure which received strong support in the legislature of 1907 and which is to be urged again in the near future. In this measure it is provided that the secretary of state shall forward, with postage prepaid, ten days before the regular general biennial

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The greatest interest centered in the campaign for United States senatorships. Of the 75 members of the legislature who were elected last June, 56 had pledged themselves to vote for the people's choice for senator, though eight of that number limited the pledge by phrasing it: "Will vote only for the Republicans' choice for senator." The legislature which convened last January contained only seven Democrats; and all of these —except one, who was absent—voted for the Republican candidate who had received a plurality vote at the general election in the previous summer. So thoroughly committed is Oregon public sentiment in favor of settling senatorial elections by popular vote, that it is said that no man who does not pledge himself to vote for the people's choice will stand much chance of nomination for the legislature.

II.

These provisions in the primary election law make it possible for the voter to favor the candidate who puts himself most straightforwardly before the people in his personal statement. The other innovation which Oregon has introduced is much more far-reaching in its recognition of the state's educational function in preparing the voter for his task: it aims to put into his hand the data for making up his mind upon measures which are to be voted upon. This is a matter of no slight moment in a community where frequent recourse is had to the people for the enactment of laws. The provision in question is a part of the statute regulating the use of the initiative and referendum.

nominating election, to every voter in the state whose address he has, a pamphlet which has been compiled under his direction. For this pamphlet each would-be candidate may furnish his photograph and a statement, paying for one page in such publication at a scale graduated somewhat according to the salary of the office, from $100 in the case of candidates for the office of United States senator or representative or for that of governor down to $10 in the case of candidates for the office of county commissioner *etc.* Candidates may have additional pages of space, up to the maximum of four, at the rate of $50 a page. Moreover, any political party or political organization, whether nominating its candidates by petition or otherwise, may furnish for such publication an argument in favor of the success of its party or principles and against any or all others, at the rate of $50 a page. The bill contains similar provisions for the distribution of such information in regard to candidates or measures to be voted on in city elections.

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It was first enacted in 1903,[1] and has been suggestively modified by the legislature of the present year.[2]

Other states have recognized it as a duty to furnish free text-books to pupils from the lowest primary grade up through the high school. Oregon has decided to furnish a free text-book to her adult pupils who are at the same time her rulers. The secretary of state is made the compiler and distributor of this text-book.

The law makes the following provisions: [3]

> The secretary of state shall cause to be printed in pamphlet form a true copy of the title and text of each measure to be submittted [at the next general election] with the number and form in which the ballot title thereof will be printed on the official ballot. The person, committee or duly authorized officers of any organization filing any petition for the initiative, but no other person or organization, shall have the right to file with the secretary of state for printing and distribution any argument advocating such measure . . . Any person, committee or organization may file with the secretary of state, for printing and distribution, any arguments they may desire, opposing any measure. . . But in every case the person or persons offering such arguments for printing and distribution shall pay to the secretary of state sufficient money to pay all the expenses for paper and printing to supply one copy with every copy of the measure to be printed by the state; and he shall forthwith notify the persons offering the same of the amount of money necessary. The secretary of state shall cause one copy of each of said arguments to be bound in the pamphlet copy of the measures to be submitted as herein provided, and all such measures and arguments to be submitted at one election shall be bound together in a single pamphlet. All the printing shall be done by the state. . . The title page of each argument shall show the measure or measures it favors or opposes and by what person or organization it is issued. When such arguments are printed he shall pay the state printer there-

[1] Act of February 24, 1903, sec. 8. [2] Act of February 25, 1907, sec. 8.

[3] In the above excerpts from the statute are included the essentials as to the procedure in the case of a measure, proposed by initiative petition, which is to be voted upon at a general election. Details as to the dates at which the various steps shall be taken are omitted. The procedure is precisely similar in case of measures voted upon at special elections, and in case of any measure referred to the people by the legislature or by referendum petition, except that arguments favoring as well as opposing such measures may be filed by any person, committee or organization.

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for from the money deposited with him and refund the surplus, if any, to the party who paid it to him. The cost of printing, binding and distributing the measures proposed, and of binding and distributing the arguments, shall be paid by the state as a part of the state printing, it being intended that only the cost of paper and printing the arguments shall be paid by the parties presenting the same, and they shall not be charged any higher rate for such work than is paid by the state for similar work and paper. Not later than the fifty-fifth day before the regular general election at which such measures are to be voted upon, the secretary of state shall transmit by mail, with postage fully prepaid, to every voter in the state whose address he may have, one copy of such pamphlet; *provided*, that if the secretary shall, at or about the same time, be mailing any other pamphlet to every voter, he may, if practicable, bind the matter herein provided for in the first part of said pamphlet.[1]

It is interesting to note the changes that have been made as a result of four years' trial of such a system. The law of 1903 provided that the arguments for or against such measures should be furnished to the secretary of state, already printed in accordance with explicit specifications, laid down in the law, as to size of page and of type and kind and quality of paper. The present law requires that the interested parties merely furnish the manuscript and pay the bills, all the rest being done by the state. Again, under the law of 1903, the secretary of state was to send to the clerk of each county in the state a sufficient number of pamphlets, containing the proposed measure and arguments for and against it, to furnish one copy to every voter in his county; the county clerk, in turn, was to distribute these pamphlets to the local registration officers; and these, as a part of their official duty, were to deliver one to every voter as he was registered. In place of this process, the present law substitutes that of mailing a copy from the secretary's office to every voter in the state.

How does the scheme work? There has as yet been no opportunity to test the new provisions that have been embodied in the law this year; but the general election of 1906 found the plan in operation in its main features, at least, and the results

[1] Laws 1907, ch. 226.

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throw some light upon the problem. In that election there were presented to the people of the entire state ten separate measures proposed by initiative petition and one which had been proposed by referendum petition. In some of the counties there were also local initiative propositions. When it is stated that these measures formed the tail-piece to a ballot on which were the names of 86 candidates for 27 offices, there can be no question that this was the Oregon voter's busy day; but our present concern is not with the voting, but with the preparation for it, with the voter's special education for this service. The text-book had been distributed months before election day. Nine of the measures were sent out to the voters unaccompanied by any arguments, no one apparently being sufficiently interested to go to the trouble and expense of defending or attacking them. On these matters, then, the state distributed no opinions, but it did put into every voter's hand the precise propositions. Each of these measures had a title-page in prescribed form, which told, also, precisely how the measure would appear upon the ballot, for example:

PROPOSED BY INITIATIVE PETITION.

For Equal Suffrage Constitutional Amendment. Vote Yes or No.
302 Yes.
303 No.

The proposed laws varied in length from one-third of a page to ten pages, each page containing about 350 words. The unargued measures, together with the votes upon them at the election, were as follows:

1. Bill for amendment of the local option law, giving Anti-Prohibitionists and Prohibitionists equal privileges.
Yes: 35,297. No: 45,144.
2. Law to abolish tolls on the Mt. Hood and Barlow Road, and providing for its ownership by the state.
Yes: 31,525. No: 44,527.
3. Constitutional amendment providing method of amending constitution and applying the referendum to all laws affecting constitutional conventions and amendments.
Yes: 47,661. No; 18,751.

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4. Constitutional amendment giving cities and towns exclusive power to enact and amend their own charters.

Yes: 52,567. No: 19,852.

5. Constitutional amendment to allow the state printing, binding, and printer's compensation to be regulated by law at any time.

Yes: 63,749. No: 9571.

6. Constitutional amendment for the initiative and referendum on local, special and municipal laws and parts of laws.

Yes; 47,678. No: 16,735.

7. Law prohibiting free passes and discrimination by railway companies and other public-service corporations.

Yes: 57,281. No: 16,779.

8. Act requiring sleeping-car companies, refrigerator-car companies and oil companies to pay an annual license upon gross earnings.

Yes: 69,635. No: 6441.

9. Act requiring express companies, telegraph companies and telephone companies to pay an annual license tax upon gross earnings.

Yes: 70,872. No: 6360.

The one measure which was presented to the voters accompanied by arguments was a so-called "equal suffrage amendment" to the state constitution. With this were bound up a seven-page argument in its favor, issued by the "Oregon Equal Suffrage Association," and a twenty-three page argument against the amendment, issued by the "Oregon State Association Opposed to the Extension of Suffrage to Women."[1] Each of these pamphlets presented a forceful array of arguments; in fact, it would not be easy to find elsewhere in so few pages a more cogent statement of both sides of this question than was here placed in the hands of every Oregon voter, two months before the election. The vote upon this question stood: Yes, 36,902; No, 47,075.

The text-book for this election, then, comprised about sixty pages of copies of proposed laws and of political discussion. Had these pamphlets been sent out by mail, as is to be done under the existing law, the postage on each would have been three cents, making a total of about $4300 for placing them in

[1] Each of these bears prominently the union label of the Portland Allied Printing Trades Council—as do also the bills in the hands of members of the legislature.

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the hands of all the voters of the state. It is evident, therefore, that the supplying of free text-books to voters is a somewhat costly enterprise. Whether it is worth while or not depends upon its results. An Oregon correspondent, who during his first year or two of residence in the state had been distinctly of the opinion that the people would not show enough interest or intelligence to make a success of direct legislation, spent the weeks before this election in a little hamlet on the western slope of the Cascades. He writes:

> I was greatly interested in the attitude of the people. At the general store (and post-office) there was an impromptu debating society, and men and measures were discussed with pungency. . . . There was distributed a good amount of literature [the text-book], giving clear statements as well as partisan arguments concerning the different measures. Sample ballots were distributed also. There can be no question of the fact that the voters were much interested, and the more intelligent ones had a sense of responsibility which made them express themselves with a good deal of emphasis.

When election day came, the fact of the people's interest was convincingly shown. The total number of votes cast was 99,445. The initiative measure which called forth most discussion was the suffrage amendment, and upon this 84 per cent of the voters expressed their opinions. On the question of taxing the gross earnings of public-service corporations 77 per cent voted; while even the one of the ten questions which evoked least interest received the votes of 64 per cent. "The average vote in law-making and constitution-mending was 74.5 per cent." The high ratio which these votes bear to the votes cast for state officers is in contrast with the ratio in many other states. In Massachusetts, in 1896, there was referred to the people a proposed change from annual to biennial elections; not more than 73 per cent of those who had voted for governor, and less than 58 per cent of the registered voters of the state, expressed an opinion upon this question. Even in Switzerland, the home of the referendum, this same indifference is to be found. "At national referenda, which excite a greater interest, the average proportion of voters who go to the polls is less than

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sixty per cent, and no law has ever been ratified by a majority of the qualified voters."[1]

In the future working of the law it may prove necessary to place some restrictions upon the publication of material submitted for the voters' text-books. Who is to decide what shall go into such pamphlets? At present the secretary of state is charged with the duty of compiling them. Apparently he has no discretion in the matter: he must cause to be printed and distributed any matter that may be filed with him by one party in favor of a given measure, and by any number of parties in opposition thereto, provided only the interested parties stand ready to pay for the printing and paper necessary to supply every voter of the state with a copy.[2] But is the mere fact that the sponsors or opponents of a measure are willing to bear this part of the cost an adequate or logical criterion to be applied to political literature which the state is to be at the charge of placing in the hands of every voter? Suppose an attempt were made to carry an amendment prohibiting the sale of intoxicating liquors; liquor dealers would not lack money to pay for printing; must all the material they send in be accepted? And if the prohibitionists, in turn, filed material for a hundred-page pamphlet, embellished with poems like "Father, dear father, come home with me now," and illustrated with scenes from the "Black Valley Railway" such as used to strike terror to our souls, must the state be the agent for placing all this in the voter's hand? That the mere cost of printing will not prove a serious deterrent to those who may wish to get their views placed before the people is shown by the unprecedented use made of this form of propaganda in the recent senatorial campaign in Oregon. One of the candidates who was elected is said to have

[1] A. Lawrence Lowell, Governments and Parties in Continental Europe (1896), vol. ii, p. 274.

[2] Replying to my inquiry as to the probable cost to the interested parties of getting before the people such arguments as were advanced for and against the "equal suffrage" amendment, the secretary of state says: "The printing, binding and paper would cost, according to the present rates of compensation provided for the state printer, in the neighborhood of $2500 for 100,000 copies of each of the pamphlets."

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mailed printed matter to practically all the voters of the state, explaining in detail, to begin with, the actual working of the new primary law and the desirability of its being enforced. That was several months before the primary election. Later he submitted his own wish to be senator, in the same fashion, and followed the matter up until the general election in June. He was said by his enemies to have spent in printing and postage a sum equal to his salary for the full term.

To discriminate between that which is and that which is not proper material for the state to put in the hands of its voters would be a delicate and perhaps dangerous task; but it is not clear that such discrimination may not prove desirable. Certainly there would be no impropriety or unfairness in the state's placing a limit upon the amount of printed matter which it will distribute for any one organization or upon any one measure. Indeed, such a limitation might prove a favor in disguise, since the effectiveness of campaign documents is ordinarily in inverse proportion to their bulk.

In these devices for the official publication and free distribution of political information and argument, is Oregon setting the pace for the campaigns of education of the future? The writer is not a convert to the idea that the increased use of the initiative and referendum in America is desirable. He not only believes that, in such varied communities as our states, the representative system has distinct advantages over direct democracy, but he would have members of the legislature genuine representatives, not mere delegates with ears to the ground. But if the work of law-making is to be transferred from legislative chambers to voting-booths, he is convinced that, in placing political information in every voter's hand, Oregon is not trying a freakish experiment but rather is pursuing the only sane course.

In our great scientific associations—for example, in the American Society of Civil Engineers with its more than 4000 members—there is sent to every member, to serve as a basis for his vote, a precise statement of proposed changes in the constitution or by-laws and a stenographic report of the debate at the society's meetings. In our legislatures, state and federal,

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every measure that is to be voted upon lies in print upon each member's desk, and every such document is kept up to date; yet it is both the member's opportunity and his duty to be present, to listen to and to participate in the most thoroughgoing discussion of legislative projects. Such sources of information are not available to the average voter. In time it will be recognized that faith in direct legislation rests on a very shaky foundation unless the state places before each voter, as it has always placed before each member of a legislature, the means of informing himself upon every question which he is to take part in deciding.

This will mean no slight burden of work and expense. But what educational expenditure by the state will bear more directly upon the safe-guarding of the state's own interests? For years there have been allowed to each member of Congress seeds to the value of about $225, to be sent at the expense of the government to the people in his district. The theory has been that by the unloading of these unsolicited and miscellaneous assortments of seeds upon the farmers throughout the land scientific agriculture would be promoted. Is it not quite as logical that the state provide for the free distribution of seeds of political thought? The cost would be less; and it is reasonable to hope that the seed thus distributed would show quite as great germinating and productive power as has been shown by that sent out from Washington. In the solution of the problem of the education of the voters, for states that are adopting direct legislation, Oregon leads the way.

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THE ETHICS OF EMPIRE[1]

MR. HOBHOUSE'S *Democracy and Reaction*—a work which has attracted much attention and has inspired fruitful discussion—is essentially a party pamphlet. The characterization will not be regarded as disparaging when it is remembered that writings of Burke which have taken high rank as contributions to political philosophy originated as party pamphlets. A series of articles which appeared in the London *Speaker* form the nucleus about which the present work has grown, and the purpose is plainly a vindication of the traditional principles of British Liberalism. In performing his task the author makes an inquiry as to the ethical principles that should control public policy, and it is this which gives the work its marked value. The effect produced by it was intensified by the appearance in close sequence of an elaborate review by Mr. John Morley,[2] in which the causes of the decay of Liberalism were analyzed. On this branch of Mr. Hobhouse's subject a later reviewer renders his best service to readers by referring them to Mr. Morley's masterly discussion.

The touch of the work on American politics is most strongly felt in another branch of the subject—that relating to the ethics of empire. Mr. Hobhouse holds that while the old humanitarian ideals are sometimes regarded as having been exploded by evolutionary science, yet on deeper examination it will be found that "the theory of evolution which was supposed to undermine them proves to be their most effective philosophical support." Before considering the specific conclusions which Mr. Hobhouse reaches in regard to imperial policy, it may be well to examine the case from the objective basis in which he finds philosophical support. We are thus referred to natural law for a clue to the principles that should determine relations between different peoples.

By the term "empire," in this discussion, is meant simply extension of the authority of any people over other peoples. This correlates the process with the universal tendency of organisms to extend into the media one of another, and gives a biological explanation of the fact—everywhere and always historically evident—that empire issues naturally

[1] Democracy and Reaction. By L. T. Hobhouse. New York, G. P. Putnam's Sons, 1905.—vii, 244 pp.

[2] In *The Nineteenth Century and After*, March and April, 1905.

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from supremacy within any sphere. It is a process not necessarily connected with intention or desire. Numerous historical examples of this might be given did space permit, but it may be enough to point to the present plight of the United States, oppressed with imperial responsibilities which it never contemplated and cordially dislikes. The rise of empire is traceable to the operation of the universal instinct of self-preservation, involving both subsistence and defense: subsistence to carry on the vital functions; defense, to avoid becoming the prey of other beings. Advancement proceeds concurrently on both lines, and hence we find that high industrial efficiency is associated with high military efficiency. Complex agencies of subsistence, such as a highly organized society requires, necessitate corresponding agencies of defense or, in other words, military and naval forces so organized as to be readily disposable as occasion may prompt. Such organs appear in society by the operation of the same laws of organic development that have given claws to the lion and talons to the eagle.

Describing the process in political phraseology, we may say that national development implies extension of national interests, and extension of national interests creates a need for agencies for their protection. If such agencies rest upon national resources so great as to be supreme within any sphere, a condition is created from which empire issues. It is conceivable that potential ability to wield empire might exist without exercise of it (the case of China might be cited), but it is not conceivable that such renunciation should take place without impairment of ability. In such case national interests are exposed to such treatment as may be meted out to them by other powers, actuated by consideration of their own interests, and are subject to attack and disturbance from casual outbreaks of rapacity. Agencies of national subsistence are correspondingly conditioned and limited, with results affecting national vitality. There are historic instances of the existence of tenacious and widespread growths of industrialism without concomitant militarism, but such growths have always afforded pasture for predaciousness. The history of countries inhabited by peoples deficient in militarism is an account of successive waves of subjugation. But no high type of industrialism has ever been evolved by such peoples.

From the influence of subjective prepossessions it may be denied that the process here described is part of the providential order the world, and it may be denounced as a moral aberration to be resisted on humanitarian grounds; but when we form our opinions upon historical evidence and not from our own notions of what ought to be, the rise of empire appears to have the constancy of

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natural law. At the same time historical evidence shows that the process has been an agency of ethical advance. Stable empire rests on industrial efficiency, so that high civilization and high militarism go together. Hence we find that throughout the history of the world great periods of industrialism are associated with some particular sway of empire. It was under the *pax Romana* that the industrialism of the ancient world reached its greatest development. The peace described in Milton's "Hymn of the Nativity" existed because militarism was master of the situation, maintaining an environment in which industrialism could flourish and form its own ideals. When Roman militarism broke down it was replaced by that of the Franks; when this in its turn failed, anarchy ensued, from which the world was rescued by the reëstablishment of militarism in the national monarchies. The greatest development of industrialism that the world has ever known is that which exists to-day in the British empire; and this is due to the *pax Britannica,* which is suppressing predaciousness and opening industrial opportunity over a greater area of the world than was ever before brought under one system of rule. To the existence of that empire governed by people of our own race, we owe no small part of our own national greatness and prosperity. The advance of civilization is a history, not of the suppression of force, but of the regulation and systematizing of force. The growth of international law has come about through adjustments of empire. The extension of civilized empire is now tending to bring the whole world under the dominion of international law, and to suppress disorder, limit the area of warfare and enlarge industrial opportunity.

The decay of empire is, however, a phenomenon quite as much in evidence as the rise of empire. If empire drains the resources of a nation without replenishing them, it exhausts its economic basis. History abounds with warnings of the risks of empire. It is quite true that, for better or worse, empire powerfully reacts upon the character of national institutions. The moral to be drawn is not that futile endeavor should be made to avoid imperial responsibility when it presents itself, but that attention should be given to consideration of the means by which the responsibility may be safely borne. Power can not be separated from responsibility. It is not the responsibility that is injurious but error in discharging it.

Extra-territorial control of any kind is essentially an imperial function, but so long as it is occasional and temporary its operations do not ordinarily attract general notice or address the public consciousness. When emergency arises something must be done, and popular instinct

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exacts of authority responsibility for results. Energetic action in defense of national interests always commands popular approval. The difficult point is that relating to extension of empire involving regular jurisdiction and administrative duty. Intervention is apt to lead on to occupation. Overthrow of sovereignty transfers responsibility to the sovereignty that has asserted its control. It is morally impossible to get rid of such responsibility; for, whatever arrangement may be made, the maker thereof can no more escape responsibility for results than effect can be disconnected from cause. The only point on which choice is really possible is as regards imperial policy. Upon what principle, then, shall imperial policy be formed so as to be ethically sound?

If the right of empire be resolvable into the right of self-preservation, it follows that the just and proper sphere of empire is limited to the exercise of the right of self-preservation. That is to say, no people has any right to interfere in the affairs of any other people save only as may be necessary for self-preservation. Putting the case affirmatively, it may be said that the suppression of predaciousness and the opening of industrial opportunity comprise the whole duty of empire. Questions of institutions and forms of government are of only incidental importance. Every people has a right to its own interpretation of liberty and to its own forms of authority, so far as these are compatible with the principle noted. As Burke said, in one of his great speeches against imperial oppression: "The general character and situation of a people must determine what sort of government is fitted for them. That, nothing else can or ought to determine."

Omitting sheer predaciousness, which soon exhausts itself by exhausting its economic basis, as has been frequently illustrated in the history of Asiatic conquest, it may be said that aberrations of empire fall within two categories: (1) the inculcation of religious ideals; (2) the inculcation of moral and political ideals. Motives of the first class have been discredited by bitter experience; but motives of the second class are strongly operative. Indeed, it is in them that Mr. Hobhouse claims to discover the ethical principle of imperial policy. He says:

> Can we, rejecting alike the rule of force, or bare expediency, and the doctrine of the abstract rights of peoples, find a concrete principle adaptable to the variation of circumstances and yet always and essentially a principle not of force but of justice? Now it happens such a principle was laid down for English Liberals with great clearness and applied with admirable sincerity over a long career by the greatest of their leaders [pp. 188, 189].

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Mr. Hobhouse proceeds to give illustrations from Mr. Gladstone's speeches, from which it is to be gathered that the rule of imperial policy is that it should be "associated with the cause of justice, with opposition to oppression, with respect for national rights, with honorable commercial enterprise." Can such a description be rightly called a concrete principle, when all its terms might need to be defined in any case that might arise? It is not conceivable that any particular policy will ever be recommended on the ground that it is unjust, oppressive, disrespectful to national rights and dishonorable in its commercialism. All the Gladstonian formula really amounts to is a counsel to be good, and that is not particularly helpful when the very thing to be decided is what is the good course to pursue. The difficulty in which Mr. Hobhouse leaves us is increased by the fact that he goes on to say that the rule is not to be construed as requiring non-interference.

> On the contrary, it makes room on due occasion for a more positive policy, and by it Mr. Gladstone was led quite logically to intervene in the affairs of foreign nations, and intervene with effect at certain moments. The Gladstonian theory is simply that men regarded as the members or as the rulers of a state do not cease to be, either as respects their rights or their duties, the subject of the moral law [p. 192].

But where in all this is the concrete principle of universal application? How is "due occasion" to be determined? Whose formulation of "the moral law" is to be the standard of behavior? Careful consideration of what Mr. Hobhouse has to say fails to discover that he has reached any objective basis of ethics or that he advances any general principle that does not turn out to be a subjective concept. His argument is that the ethical progress of mankind has established ideals of right and duty that should control all social relations, those between different peoples and different states as well as those between individual members of the same society. But the existence of moral obligation is not in question. What is in question is the rule or principle to be applied in determining and discharging moral obligation. In times when inculcation of religious ideals was an imperial motive of great force, such a principle was made clear and simple by the supposed duty of upholding true and suppressing false religion. Does it introduce a new principle of right or justify intervention by one people in the affairs of another, if moral and political ideals be substituted for religious ideals? If that principle be admitted, what rule is then to govern its application save the rule of force which Mr. Hobhouse repudiates? Since all that

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the proposition demands by its terms is that wielders of empire shall believe in its superiority to opposing organizations of authority and different systems of culture, the principle justifies Mohammedan empire —which Mr. Hobhouse reprobates—quite as effectually as civilized empire. Has any Mahdi ever made trouble for the British government, who did not believe in his sacred mission?

Subjective impressions as to the relative superiority of different types of social and political organization can not furnish any scientific criterion. From the law of its being every type must instinctively feel that it is the true type and that other types are aberrant so far as they are different. We have no doubt as to the superiority of Western civilization as compared with Chinese culture; neither have the Chinese any doubt as to the superiority of their ancient culture over the rough and tough barbarism of the West. The Brahmins of India regard their English rulers somewhat as the cultured Romans in the decadence of the empire regarded the barbarian chiefs who ruled over them. The attitude of the Moslem world to Christendom is one of hatred or disdain. The military superiority of civilization is a comparatively recent fact and of itself proves nothing more than physical supremacy. Suppose the yellow race should gain military ascendency in the world under Japanese leadership, would that confer upon them the right to make their moral and political ideals a principle of justice, entitling them to intervene in the affairs of other countries for the sake of inculcating those ideals and correcting departures from them?

The fact that the principle formulated by Mr. Hobhouse is able to inspire great moral enthusiasm, with corresponding intensity of reprobation for those who venture to question it, is no stronger proof of its validity than was the like emotional fervor formerly excited by inculcation of religious ideals as an imperial motive. Both classes of motives rest alike on subjective concepts, and one is no more valid than the other. It is a tendency of thought, for which pyschology readily accounts, to regard municipal fitness as evidence of universal propriety; and it is just because Liberal administration is prone to such illusions that it is so apt to be incompetent and disastrous in external affairs, although in internal affairs it can show great and beneficent achievement. Recognition of the cause of Liberal failure, however, is likely to be slow and difficult. It took many hard knocks to beat the idea of religious tolerance into the heads of rulers; and the lesson of moral and political tolerance is yet to be learned. The way in which events are unfolding in Cuba, Hawaii and the Philippines indicates that material for a sad chapter of history may be supplied by the efforts of

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the people of the United States to spread what they are pleased to describe as self-government and to make-over other peoples according to their own moral pattern. Meanwhile, if we may judge from analogous characteristics of the period in which the religious motive of empire prevailed, it will be almost impossible to obtain consideration of the matter from any other point of view than that our own moral and political ideals constitute an absolute principle of justice. Disastrous results in dealing with other people will be accounted for in the same way in which we now shirk responsibility for our failure with the negroes—by putting the blame on their peculiar characteristics. Such logic is like that of the clumsy tailor who argued that the clothes he made were all right but the man did not happen to fit them.

If, however, the right of empire is resolvable into the right of self-preservation, then we have a firm objective basis on which to found imperial policy. There is then no room for any policy of assimilation, benevolent or otherwise. We have no right to interfere with race habits, culture, morality or institutions, save as may be necessary to suppress predatory tendencies. Effective police control is the first duty. But the opening of industrial opportunity is a correlated duty. When we prevent a people from living by rapine, we must enable them to live by industry. The engineer should accompany the policeman. Administration conducted on such principles has effected profound transformations without any direct pressure upon the people apart from the suppression of disorder and the punishment of crime. The gradual change in the environment thus brought about reacts on the character of the people, and the sequence of development follows its natural order. When in 1875 British administrators took charge of the Malay peninsula, the start was not made by turning a host of school teachers into the country to introduce a new language and remodel native ideas; there was no attempt made to set up an imported framework of government and to crush the people into moral pulp for the purpose of moulding them into this framework; on the contrary, the policy was to consult native ideas and prejudices as much as possible and to facilitate development on purely native lines. There is now an extensive system of vernacular schools, but it has grown up in sequence to industrial development, and it reflects the higher ideals of life that have arisen under the influence of peace and prosperity. Like methods of admintration have produced similar results under British rule in Egypt, under Russian rule in Central Asia, under French rule in Northern Africa and under Japanese rule in Formosa.

The relations between peoples which arise under the operation of

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such imperial principles resemble those which frequently occur between different organisms and which the biologists call symbiosis, or living together. This is a condition in which different organisms minister each to the other's welfare and derive reciprocal benefits from the vital association. There are reasons for believing that no other kind of permanent relationship between the white race and other races is scientifically possible. Unless empire accomplishes such adjustment of interests, it is doomed to failure and will be a source of immense mischief while it lasts. The colored races of Asia and Africa will never be extruded from their natural habitats by the spread of the white race, nor will they ever be denatured by any ordeals to which they may be subjected by superior force.

If these considerations are sound, the colonial policy of the United States is iniquitous, not because it asserts empire but because it violates the ethics of empire. What Chief Justice Marshall termed "American empire" is a jurisdictional fact. In the Insular Cases the supreme court of the United States adopted the phrase as descriptive of the relationship between the United States and its territories, whether contiguous or distant. The decision of the court is as sound in ethics as it is in law. Everywhere and always empire is an incident of supremacy within any sphere. It is the universal law of organic development. But it will make an immense difference in the consequences of empire what shall be the guiding principle of its policy. In making the inculcation of our own moral and political ideals the rule of American empire regardless of circumstances, we have entered on a course that can lead only to disaster. But at present the very characteristics of our policy which are wrong are vaunted as its merit and as its justification, while attack upon it generally passes by the details to strike at the fundamental fact of empire, which is perfectly sound. Doubtless the time will come when there will be a clearer perception of national duty, but meanwhile there will be much to suffer and much to learn.

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REVIEWS

English Colonies in America. By JOHN A. DOYLE. Volume IV: *The Middle Colonies;* Volume V: *The Colonies under the House of Hanover.* New York, Henry Holt & Company, 1907. —447, 497 pp.

After a lapse of twenty years since the issue of his first three volumes, Mr. Doyle now completes his work on the English colonies in America. The delay has been so prolonged that for a time it seemed as if the task had been permanently abandoned, or perhaps that the author had resolved to examine the mass of unprinted material which exists in the Public Record Office and elsewhere and thus to produce an exhaustive work upon the early eighteenth century. Neither supposition has proved to be true, and the work has at last been completed in general conformity with the original plan.

The main division line in our colonial history Mr. Doyle draws at 1714—the date when the house of Hanover came to the throne of England. His work is mainly concerned with the earlier period, four of his five volumes being devoted to colonial conditions before 1714. In conformity with his earlier treatment of the South and of New England, the first of the volumes now under review brings the history of the middle colonies down to the close of the reign of Anne. Of this volume considerably more than one-half is occupied with New Netherland and New York, and the rest with New Jersey and Pennsylvania, the last named colony being dismissed with a single chapter. The final volume covers the years between 1714 and 1760. Its chapters contain discussions of the general social condition of the colonies at the time, of their administrative development, their economic progress, their religion, literature and education, the relations of the settlers with the inferior races, and some account of the extent to which various European nationalities contributed to the population of the colonies. The volume closes with a detailed study of the colonization of Georgia and a rather summary account of the conquest of Canada. In the volume upon the middle colonies the treatment is to a degree systematic and in some parts quite detailed. Much the same method is followed as was apparent in the earlier instalments of the work. But the volume relating to the Hanoverian period is decidedly sketchy and unsystematic. The

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impression made upon the mind of the reader is that much of the work which Mr. Doyle did upon this final volume was perfunctory. His chief interest and enthusiasm have been shown in his study of New England. With that his work reached its climax. Now and again in his later pages he refers to New England as exhibiting the most vigorous social and political life among the colonies, with which he is forced to compare other and much less efficient organizations. As the Puritan commonwealth recedes from view the interest of the writer wanes, only to reappear, as by a faint reflection, in his treatment of Oglethorpe and his experiment on the banks of the Savannah in the middle of the eighteenth century.

It is in the cosmopolitanism of the middle colonies, the varied national, social and religious elements of which their population was composed, that Mr. Doyle finds the explanation of their inertness and lack of vigor as political organizations. The contrast between them and New England in these respects was of course very marked, and the emphasis which is laid upon it is perhaps the most suggestive feature in the first of these two volumes. The gradual extension of English influence through the region which had originally been New Netherland proved the saving element. From it originated such capacity for self-government as existed there; but even then the English of the middle colonies lacked the vigor both for attack and resistance which was implanted in New England by its religious unity.

The reader, however, will not find many such generalizations to guide his course through the pages of these volumes. The various colonies and colonial experiments he will find treated to a large extent in isolation. Judicious reflections upon characters and events abound. Leisler, some may think, is treated with undue harshness, while Andros certainly wins no laurels at the hands of this historian. Suggestive characterizations of Stuyvesant, Nicolls, Penn, Dongan and of several of the later royal governors appear. The leading features, political and social, of the colonies are outlined, and the earlier stages of their development are described; but one misses a clear scientific view of the course and tendency of the period as a whole. This may be attributed in part to the inadequacy of the source material to which Mr. Doyle has limited himself. For New Netherland and New York he has relied very largely upon Brodhead—an accurate writer to be sure, but one whose methods and views can hardly be supposed to meet the requirements of the present time. Only a desultory use has been made of a part of the extant collections of documents and laws which relate to the three middle colonies. Unprinted materials, whether in England or America, the author wholly ignores.

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But the writer's chief fault lies in his failure to grasp, or at least to set forth, the significance of our colonial history as a whole. This may very possibly be due to his failure to study the colonies as institutions, and to bring out in clear relief what they were, not only in themselves and in their relations to one another, but in their relations with the home government as well. This is a radical fault in all the so-called general histories of that period. They are not based upon a clear and true conception of the colonies as political structures or of British colonial policy and its influence upon them. In a certain way Mr. Doyle realizes the necessity of the broader mode of study and now and again his treatment of a subject to a certain extent conforms to it. But his work is not planned in agreement with it, and therefore he often obscures the picture by the introduction of unrelated and miscellaneous details or by the omission of significant facts. Much, for example, is said about the relations between executives and legislatures, about Indian affairs, about military operations, but we have no consistent account of the policy of the colonies in any of these matters. The omission, moreover, of all consecutive reference to Great Britain and its colonial policy makes it impossible to tell in what direction the colonies were tending; whether it was toward greater dependence or toward a higher degree of self-government. The result is that we have not a scientific history, not a comparative study of a group of related through differing political structures, not an articulate account of any phase in the growth either of the British empire or of the American nation, but a series of more or less interesting facts and comments arranged in order of time. Moreover, the division of time is unsatisfactory. If we view the colonial period as a whole and with reference to the issues that were peculiar to itself, the year 1690, not 1714, marks approximately its chief transition, and the choice of the later date tends to confuse the treatment of the whole.

It must also be said that for a satisfactory treatment of events subsequent to 1690 a writer must have at his command at least a large part of the unprinted manuscript material which exists in the Public Record Office and other British repositories, and also not a few legislative and executive journals and laws which still remain in manuscript on this side of the ocean. Of this material Mr. Doyle has made no effort to avail himself. Only occasionally in his pages do glimpses appear of the imperial point of view and of the attitude which the colonies held in reference thereto. His final volume is far more fragmentary and indequate than any of its predecessors. One would infer from reading it that the history of a declining, rather than a growing,

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political system was being related. The material which it contains is important only for certain episodes, and if it was all we had to draw upon it would be difficult to understand the significance of the Revolution. But in this regard Mr. Doyle only shows the defects which till the present time have characterized all attempts to treat from the English standpoint the period of the royal provinces and the French wars. Decades must pass before the materials for that period can be made accessible to the extent which will be necessary before a thoroughly satisfactory history of the time can be written.

Numerous errors in the spelling of proper names, which appear in the American as well as the English edition of these volumes, show careless proof-reading. In addition there are a number of unpardonable mistakes in geography. Flatlands and Flatbush are near the southwest, not the southeast, extremity of Long Island (iv, 35). Nicolls's ships anchored some distance west of Jamaica bay (iv, 98). Nine hundred miles is more than twice the distance which lies between Quebec and the Mohawk country (iv, 121). The boundary of New York was to be twenty miles east, not north, of the Hudson river (iv, 167). The Onondaga country was in central New York, and not in the region which is now Vermont (iv, 232). Newtown was on the shore of Long Island, not of Coney Island (iv, 267). The traveler passed from New Hampshire into Massachusetts by using, not the Piscataqua river, but the Merrimac (v, 5). The Ohio river can scarcely be said to have a west bank extending from the Monongahela to the Wabash (v, 265).

In the time of Stuyvesant only one patroon—Van Rensselaer—remained in New Netherland (iv, 29). The author attributes far too great significance to Nicolls's assembly at Hempstead (iv, 109), for a somewhat similar attitude was assumed by royal officials toward the assembly of Virginia before 1640. It would have been well if Mr. Doyle had given more definite reasons for supposing (iv, 159) that the Duke of York was induced by the advice of Penn to grant an assembly to his province. It is not necessary to suppose that Dongan was moved by desire for fees when he compelled the towns in New York to renew or take out patents for their lands (iv, 169). Quit-rents were a proper feature of the provincial land system, and this was the first time that decisive steps had been taken to collect them in New York. Virginia claimed repeatedly during the seventeenth century the exclusive right of self-taxation, and all or nearly all the other colonies did the same early in their existence (iv, 269). The New England colonies were involved from the beginning in the second intercolonial war, and New York

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escaped for a time only because of an existing treaty of peace between the Iroquois and the French (iv, 270). Fort Frontenac was abandoned in 1689, after the Iroquois had made their attack, not on Prairie de la Madeleine, but on Lachine (iv, 280). The people of West Jersey continued to urge the claim that they had the right to choose the governor and other officers after the death of Byllinge, and were urging this claim against Daniel Coxe when they were included as a part of the Dominion of New England (iv, 334). Under the Charter of Liberties of Pennsylvania of 1701 there was an important modification of the constitutional arrangements, in that the council of the province then became appointive and ceased therefore to exercise legislative powers (iv, 424). It was Jonathan, not Andrew, Belcher who was associated with Francis Wilks as agent of Massachusetts in 1728 (v, 92). The account given of the acts of trade (v, 116) is extremely loose and unsatisfactory. It was Andrew, not Alexander, Hamilton who acted as counsel in the Zenger trial.

HERBERT L. OSGOOD.

Baumwollproduktion und Pflanzungswirtschaft in den nordamerikanischen Südstaaten. By ERNST VON HALLE. Zweiter Teil: *Sezessionskrieg und Rekonstruktion.* (Schmoller und Sering, Staats- und sozialwissenschaftliche Forschungen, Band XXVI, Heft 1.) Leipzig, Duncker und Humblot, 1906.—xxvi, 669 pp.

Nine years have elapsed since Dr. von Halle published the first volume of his work bearing the above title; and in the meantime so detailed have been his researches and so voluminous his materials that he has been obliged to defer to a still more distant date and to a third volume the completion of his work, and to satisfy himself with reciting in this second volume the history of the two decades 1861–1880.

A tendency of the author which revealed itself in a marked degree in the first volume, not to confine himself to the subject-matter indicated by the title of his book, has been carried to such an excess in this second volume that the title of the book no longer conveys any correct notion of its real contents. This is the more to be deplored because the subjects treated in this second volume possess an interest for a much larger number of readers than will be likely to be attracted by the title given to the book, and because the author's work has been so patiently and carefully done that it seems desirable that it should reach a very large circle of students interested in the subject. "The Civil War and Reconstruction" is the only title which would adequately de-

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scribe the contents of this volume; and even then it is safe to say that there is no single work in any language, bearing that or a similar title, which is equally comprehensive in its scope. Not only has the author not limited himself to a discussion of cotton production and the agricultural economy of the South, but he has not even confined himself to the economic history of the period. The constitutional, political, military, diplomatic, financial, social and cultural events of the period have been dealt with in such generous measure that it would be difficult to say which phase of the subject receives most emphasis.

The thoroughness with which the work has been done is characteristic of the author's nationality. The detailed treatment of the subject-matter; the mass of literature referred to in the foot-notes, which has apparently been examined in no superficial manner; the minute criticism of other writers—these are all things which we have come to expect from German writers, but they never fail to excite our admiration for their patience and industry.

Perhaps the chief merit of the first book of Dr. von Halle's second volume is the clearness with which he shows how seriously the South was handicapped throughout the war because of the entire absence of a modern commercial and industrial organization. Forced to live within itself, the South proved unequal to the task; while the North, so far from realizing its supposed dependence upon Southern cotton, actually grew rich during the war. The South's superior military leadership counted for little against this economic superiority of the North.

Possibly the most interesting chapter in this book is that which describes the social conditions in the South during the war. Out of a mass of literature, composed mainly of the personal reminiscences of various Southerners, Dr. von Halle has constructed a significant account of the manner in which the men and women of the South were obliged to readjust their daily lives to a condition of affairs with which they were for the most part entirely unfamiliar. The flight from place to place before the invading armies, the loss of the runaway servants, the rising scale of prices and the absence of the luxuries and even the comforts of a civilized existence forced a return to something like primitive conditions of living.

The author's survey of the Reconstruction period shows little sympathy with the measures adopted by the Northern politicians. Johnson, he thinks, had the right theory of reconstruction but attempted to carry out this theory by unfortunate methods. Grant lacked capacity for leadership in political affairs. The author is quite convinced that an error was made in giving the freedman the political franchise. He

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speaks favorably of the early efforts of the Freedmen's Bureau, but condemns its later administration. The downfall of the Freedmen's Bank, in his judgment, had far-reaching effects in hindering the development of thrift among the negroes and did much to destroy their confidence in their Northern leaders.

Dr. von Halle does not confine his treatment of the race problem to the two decades under examination. He has, on the whole, little faith in the educational methods which up to the present time have been applied to the negro. Too little attention, he thinks, has been paid to race peculiarities and to the influence of early environment upon the negroes. The education offered them has proceeded on the theory that the moral and intellectual standards of the race must be the same as those of the whites. Furthermore, the author thinks that the work of instruction was too soon given over to negro teachers, who were neither morally nor intellectually equal to the task.

Dr. von Halle accepts the conclusion of other writers that in the efforts at agricultural reconstruction the system of agricultural credit has proved to be the chief obstacle. Following the lead of Dr. Banks, he gives an elaborate classification of the different systems of land tenure found in the South, and he criticizes the writer of this review for failing to distinguish between the "cropping system" as it is called in the South and the "share system" as it is generally known throughout this country. Yet the reviewer cannot see that Dr. von Halle's description of the cropping system differs in any material respect from that which he himself has given,[2] and he suggests that Dr. von Halle is mistaken in thinking that the term "share system" in this country is capable of exact definition. The reviewer is familiar with the use of the term "share system" in the middle West, and it is there, at least, applied to as many different forms of agreement between landlord and tenant as is the term "cropping system" in the South. Generally speaking, Dr. von Halle is perhaps right in treating the "cropping system" as a preliminary stage to a more developed form of the "share system"; but there is nothing to be gained by attempting too refined a classification of the different forms of land tenure in the United States.

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[1] Economics of Land Tenure in Georgia. Columbia University Studies in History, Economics and Public Law, vol. xxiii, no. 1.

[2] *Cf.* Hammond, The Cotton Culture and the Cotton Trade. Publications of the American Economic Association, N. S. I, 132, 133.

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History of the United States from the Compromise of 1850 to the Final Restoration of Home Rule at the South in 1877. By JAMES FORD RHODES. New York, The Macmillan Company, 1906. Volumes VI and VII.—xx, 440; xiii, 431 pp.

When in 1892 Mr. Rhodes published the first volume of his now famous history, he announced, in imitation no doubt of Macaulay, that he purposed "to write the history of the United States from the introduction of the compromise measure of 1850 down to the inauguration of Grover Cleveland." In the preface to the two volumes which now appear he announces, however, that further reflection has convinced him that a more natural close is the date of the final restoration of home rule in the South after the inauguration of Hayes, and he has acted in accordance with this conviction. He believes that to write a purely narrative history of the succeeding years would be "to shirk a duty and to miss the significance of the period." He confesses that the nineteen years' devotion to the one period has had a tendency to narrow his field of vision, and he says that he feels the need, before attacking the social questions involved in our more recent history, "of a systematic study of the history of Europe during the eighteenth and nineteenth centuries . . . in order to bring to bear the light which the experience of those countries may throw upon our own progress since 1877." Historical students will join in wishing that Mr. Rhodes may enjoy his well-earned rest, and that he may later find the necessary time and strength to continue his survey.

As regards the two volumes that are now presented to the public, it seems probable that the general verdict will be that, though entitled to high praise, they are not in all respects up to the high standard set by some of the volumes that appeared before them. Eagerness to complete a work on which the author had so long been engaged may have been an unconscious factor in producing this result, but there were undoubtedly other causes. The period covered is perhaps the most complicated and difficult in our history; much of the material upon it is not yet available; the judgments of history on many aspects of it are not yet made up. Owing to the vast number of legal questions involved in the period, Mr. Rhodes is by training and temperament less fitted to deal with it than with some of the years covered by his earlier volumes.

In his account of Reconstruction Mr. Rhodes obviously intends to be fair, and he usually manages to keep upon solid ground. It may be suggested, however, that in his judgment on the Congressional plan

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of Reconstruction he, in common with many other historians, is too much inclined to apply principles and precepts which are admirable in times of peace and quiet but which lose much of their force in times of revolution. And the Civil War and the events that followed it assuredly constitute one of the greatest revolutions known to history; a revolution that did not go in the direction expected by those who began it, but that was all the more cataclysmic because it took the opposite direction. Measures that are utterly without justification in times of peace are regarded as entirely legitimate in times of war; and much the same justification may be urged in favor of some of the measures resorted to in the period of Reconstruction. A great war had just resulted in the triumph of certain principles which the world is now agreed were just and right. In the eyes of the victorious party the problem which then presented itself was the preservation of the principles that had been vindicated upon the battlefield. One policy—the milder one—gave some promise of achieving that result; but whether it would have done so is still a matter of debate and of doubt. A harsher policy, a more "thorough" one, assured the result beyond reasonable question and appeared, in the eyes of many, to promise other benefits, most of which, as the event has proved, did not materialize. The latter policy was, of course, adopted; under similar circumstances it would have been adopted by any party, in any country, in any age. It produced some lamentable results. Nowhere else in American history have there been such corruption and disorder as then followed in some of the Southern states—except at the very same time in the metropolis of the country under Tweed. But the nation as a whole was safely tided over the crisis, and the results of the war, so far as was physically possible, were secured. It is easy now to point out the failures of Reconstruction. They are obvious. But can any reasonable man doubt that the failures of any other policy would also have become obvious? No country that passes through a complete social revolution can hope to settle down at once to peace and quiet, any more than an individual seized with a virulent attack of smallpox or Asiatic cholera can hope to recover without some degree of suffering and inconvenience, whether the treatment he receives be in accordance with the principles of allopathy, homœopathy or Christian science. Suppose the Johnson plan of Reconstruction had been adopted by the Radicals. There would, from the very nature of the situation, have been great disorders in the South, that might well have surpassed those which actually did occur—and historians like Mr. Rhodes would now be chiding Charles Summer and Thaddeus Stevens for their childlike faith in human nature.

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If this reasoning be sound, it seems clear that the historian of the Reconstruction period should devote more space than Mr. Rhodes has done to the successes of Reconstruction and less space to its failures. As a starting point he could take the fact that, speaking broadly, the public school system of practically every Southern state was created by the carpet-bag governments. Then, if he cared to go into the causes of financial prostration during the carpet-bag era, he would find that some, if not most, of that prostration was due to the destruction of property during the war, to the emancipation of billions of dollars worth of slaves, to the disorders incident to the change from one labor system to another, and to the panic of the early seventies, which well-nigh ruined the whole country. Even the amount of stealing done (and it must be admitted that at the lowest estimate there was enough of it) was by no means so large as is generally represented. The great increase in the state debts is not, as some writers would have us believe, a fair measure of peculation. Expenditures had been increased by the necessity of repairing the ravages of war, by the establishment of a school system, and by bonuses to railroads and canals, some of which were *bona fide* enterprises. Tax receipts had fallen off as a result of the decrease in the value of property, and state bonds had to be floated far below par. Financiers had little faith in Southern bonds, partly because of unsettled conditions, and partly because in the period before the war so many of the states in that section had repudiated their debts. What faith they had was mostly misplaced; for after the states were "redeemed" a large proportion of the bonds was repudiated, the good along with the bad. Such matters as these should receive more consideration than is usually accorded them by writers on the period, for assuredly the carpet-bag governments have enough to answer for without being saddled with what is not their due. And, not to discuss this aspect of the matter further, in passing final judgment upon the policy of Reconstruction it should not be forgotten that, despite all the mistakes that were made, the United States recovered from the effects of the Civil War in a shorter time than any one, judging from similar occurrences in history, would have ventured to predict.

In the two volumes under examination the reviewer has noted a number of errors and some doubtful statements with which it would be easy to quarrel—which all goes to show that even a master can lay no claim to infallibility. Only a few such matters can be noted here. The assertion that "'bull-dozing' tactics do not seem to have been used to any extent, if at all, in the South except in South Carolina" during the campaign of 1876 (vol. vii, p. 224) is certainly untrue, at least as

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regards Louisiana, where even the testimony of Democratic witnesses shows beyond the shadow of a doubt that several political murders and numerous political outrages did occur. There were not so many such cases as in some previous elections, and some of the alleged outrages were unquestionably hoaxes, but there were cases enough to change the vote materially. If Mr. Rhodes had made use of the testimony collected by the congressional committees instead of relying merely upon their reports, he would not have made this statement. He may be pardoned for not reading all the evidence, for it makes up several thousand pages of finely printed Congressional material, and it is valueless unless subjected to the most careful critical processes. Again, it is incorrect to say that Hayes had 185, Tilden 184, "regularly authenticated" votes (vol. vii, p. 239), for in Oregon the "regularly authenticated" votes were those cast by the Democratic claimant Cronin and his trumped-up college. Nor is the statement on the same page, that the Democrats then had no desire for the vote in Oregon, in exact accordance with the facts in the case. Some of them, it is true, held the motives Mr. Rhodes sets forth, but a very large number would gladly have taken the one all-essential vote from any source. The account of the cipher dispatches (vol. vii, p. 244) is somewhat misleading. Despatches "savoring of corruption" were not only sent "to Colonel W. T. Pelton, Tilden's nephew," at Tilden's home, but numbers of actual propositions to buy votes were, on his own confession, sent by Pelton to agents in the Southern states, and Pelton himself went to Baltimore to conclude a corrupt deal. Herein lies a distinction and a decided difference. Watterson's announcement about "one hundred thousand unarmed citizens" was made in a speech on January 8 at Washington, and not, as Mr. Rhodes says, in the *Courier-Journal* (vol. vii, p. 242). Hayes took the oath of office on the night of the 3rd of March, not on the 4th (vol. vii, p. 279); but it is not strange that Mr. Rhodes failed to ascertain the exact facts on this point, for they were not published until a year ago. The opinion that the Republican case was better managed than the Democratic (vol. vii, pp. 280, 281) is correct; but there ought to be more recognition of the fact that the Republican counsel had the advantage in that they were able to place themselves squarely on the line of cleavage between state and federal powers, whereas the Democrats were forced in the different cases to adopt positions that were inconsistent with each other. The quotation from the *Nation* in which O'Connor's argument is referred to as "a masterpiece" (vol. vii, p. 281) is misleading. As a matter of fact, his speech was rambling

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and disappointing. The statement that if the commission had gone behind the returns the votes of Florida and Louisiana would either have been counted for Tilden or altogether rejected (vol. vii, p. 282) is wholly unwarranted and totally erroneous. The Republicans were prepared to fight the contest through even had the commission decided to go behind the returns. The fact that the Republicans saw it to their advantage to make the first fight on constitutional grounds has created an altogether wrong impression concerning the real strength of their position in the disputed states. That, under ordinary circumstances, it would have been better to throw out the votes of the disputed states is unquestionable; but there was much justice in the Republican contention that with a fair election these states would have cast their votes for Hayes, and that it was not right that Tilden should reap the reward of Democratic intimidation and violence. To have thrown out votes under such circumstances would have established a precedent fraught with future temptations.

Now that Mr. Rhodes's work is in a sense completed, an attempt may be made to appraise it as a whole. It may be said at the outset that he cannot lay claim to having produced a new historical synthesis, for he is a story-teller rather than a philosopher. But, as a story-teller, he has some decided merits; and he will probably take a place among the half-dozen greatest historians whom this country has produced. He has gone into the sources, and his work is no mere compilation. He is discriminating and usually fair, though in his efforts to be impartial and please both sides he sometimes goes so far as to leave out coloring that ought to be put in. This is not the best method for arriving at historical truth, but it goes far toward closing "bloody chasms" and "keeping peace in the now reunited family." He has managed to make his pages interesting, though rarely engrossing. He has not himself written many passages that are quotable, but he has a keen eye for quotable passages in the writings of others. If he does not often lead his reader over mountain peaks, he does succeed in keeping him out of the slough of despond. When all this is said, it must still be admitted that in this matter of literary expression lies perhaps his weakest point. Though his style is readable and eminently creditable, it lacks that form and finish, that indescribable charm, which all writers seek but few attain. And when this is said of a historian, it means that sometime, when desire and skill meet more happily in some other man, the work will be better done. Only one American historian has written in such a way that it may be doubted whether this will prove to be his fate. Possessed by a life-long ambi-

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tion to do a certain work, equipped with the requisite education and means, living at a time when it was still possible to acquire a first-hand knowledge of the wild life he sought to portray, and gifted with a marvellous literary style, Francis Parkman was able to tell the story of New France as it will never be told again. But even Parkman's work will have to be edited here and there to make it square with information that was not accessible to him. Such is the vanity of the labor of the historian.

PAUL LELAND HAWORTH.

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The Life of Charles A. Dana. By JAMES HARRISON WILSON. New York and London, Harper Brothers, 1907.—545 pp.

The Life and Letters of Edwin Lawrence Godkin. Edited by ROLLO OGDEN. With portraits. New York, The Macmillan Company, 1907.—Two volumes: 322, 278 pp.

It is a fact not without interest that there should appear almost simultaneously the biographies of two men whose careers were contemporaneous, who filled much space in the public mind, and who were alike even amid their very striking differences. Their differences—antagonisms, indeed—political and personal, are sufficiently well known. The points of likeness are, however, also quite perceptible in the circumstances of their lives. Not to draw a too Plutarchian parallel, it is enough to remember that each of these conspicuous men began his public life not long before the outbreak of the Civil War, that each in his own way served the national government throughout that conflict, that each at the close of it became the chief of an influential journal, and that from this time to the end of his life each exercised a considerable influence over public opinion.

Still, the contrasts are much more fundamental than the likenesses; and they are exemplified in these two biographies. Mr. Dana was not given to writing letters or preserving personal memoranda. Hence General Wilson has cast his biography in narrative form with comparatively few quotations. Mr. Godkin, on the other hand, carried on a large private correspondence and wrote to his friends with the same gusto and vivacity as for print and of course with still more unreserve. Mr. Ogden's work is, therefore, as he himself describes it, that of an editor. He has allowed us to read of Mr. Godkin's life, experiences and opinions largely in the pungent sentences of Mr. Godkin himself, the citations being very deftly held together by a tenuous thread of narrative.

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Both books are remarkably interesting, though, in reading each, one must remember that he is reading the memorial of a friend and not the matured and balanced criticism of a judge. General Wilson came to know Mr. Dana first in 1863, when the latter was acting as a special commissioner for the war department, sent out by Stanton to report upon the various army chiefs, especially upon Grant, whose fate was then hanging in the balance. Wilson and Dana became fast friends, and seem to have held the same opinion regarding Grant. "We sincerely believed that Grant, whatever might be his faults and weaknesses, was a far safer man to command the army than any other general in it, or than any that might be sent to it from another field." It is not likely that General Wilson overestimates the important part which Dana played, during the Vicksburg campaign and before it, in strengthening Stanton's faith in Grant and, indirectly, in preventing Lincoln from carrying out his original purpose of allowing McClernand to direct the military operations around Vicksburg. Dana's keen judgment of men and his ability to express his judgment in a convincing way were, beyond question, of the greatest service to Grant at this great crisis, and therefore, as the event showed, to the nation. General Wilson has given from his own experience many interesting personal reminiscences of Grant, McClernand and Rawlins, and of Dana himself; though he has added scarcely anything important to what was already known from other sources, including Dana's own *Recollections of the Civil War*. It is worth noting, however, that Dana's frank comments on the various generals were not wholly to the taste of Mr. Lincoln, and that the special commissioner received a strong hint from Stanton to refrain from personalities. Some further light is thrown on the mystery of Butler's alleged hold upon Grant (p. 335).

As to why the break between Grant and Dana ultimately came about, General Wilson has no very clear account to give. He intimates that friends of Grant, such as E. B. Washburne of Illinois, were in part responsible, and that in time they aroused in Grant's mind a certain suspicion of Dana's loyalty. When Dana opposed the plan to revive the grade of general for Grant's benefit, the latter took it as a personal matter. But it is further claimed that Grant's various blunders—his acceptance of gifts, his nomination of Borie and A. T. Stewart for cabinet offices—convinced Dana that the successful soldier was unfit for high civil office. The author would reject the assumption that Dana's attacks upon the president in the *Sun* were due to Grant's refusal to appoint him collector of customs for the port of New York and to the actual offer of a paltry appraisership, at which his editorial opponents

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sneered. It seems on the whole likely that Dana would in any case have turned on Grant. He was just developing his peculiar gifts for personal journalism; and to be in opposition suited him far better than a course which would have tied his hands and constrained his pen to decorous phrases. From this time, indeed, begins the second half of Dana's life—so strangely unlike the first as to seem that of another man.

It is just here that General Wilson's book ceases to be of any particular value to the reader. No full and satisfactory account is given of Dana as an editor. Only about a hundred pages are devoted to that phase which most Americans remember best. For the treatment of it, the author evidently had no taste; and we may infer that he did not carefully peruse the *Sun* in the days when it was, at least, furnishing phrases and catchwords for everyone who set up a cave of Adullam outside of the Republican party. General Wilson, however, would not have us think that, as an editor, Dana had only prejudices in lieu of principles, or that his violence of language produced no definite results. He remarks that Dana was the first to nominate Greeley in 1872 (a rather doubtful measure at the best), and he ascribes to him, as unchanging political tenets, a belief in protectionism, in the gold standard, in the coming annexation of Canada to the United States and in the decentralization of the federal government. He regards Dana as having done a work of great importance in exposing the corruption of political life under Grant. He almost wholly ignores Dana's attitude toward Cleveland in the three great campaigns of 1884, 1888 and 1892. Apparently (on p. 424) he forgets that Dana defended and even eulogized Tweed, until after the great uprising against that malefactor had become quite irresistible. Taken as a whole, General Wilson's book is excellent in so far as it relates to Dana's early years and to the Civil War. For the rest, it lacks that fulness of information which is necessary to a complete survey of a remarkable career.

The two volumes which tell of Mr. Godkin's life are entertaining to a degree. They make one feel that here we have a selection of the most pungent paragraphs of the *Nation* and the *Evening Post*. When the vivacious young Irishman first visited the United States in 1856, he had already traveled much, read much and written much. His letters from the Crimea to the London *Daily News* (from which liberal extracts are given by Mr. Ogden) prove that he had already mastered his profession; and so his comments upon things American are exceedingly piquant and informing—both then and during the later period of the Civil War. He went everywhere and saw everything and everybody—mass-meetings, revivals, southern cabins, social gatherings,

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politicians, journalists, scholars—and he judged them all with that slightly unsympathetic yet often pitilessly truthful detachment which afterwards made his words so weighty. The first volume really contains a life-like picture of men and manners in the United States from 1856 to 1867. Nor are his views of individuals less interesting. Thus he describes C. A. Dana, in 1856, as "the rising hope of the stern, unbending Radicals" (vol. i, p. 168). Of Stephen A. Douglas he wrote: "He is a model demagogue. . . . There lies in his bullet-head and thick neck enough combativeness, courage and ability for three men of his dimensions. The slightest touch of what genteel people call 'improvement' would spoil him" (vol. i. p. 178). These comments, merely by way of illustration. During the Civil War, Mr. Godkin was a warm and, in fact, ardent defender of the Union cause. He even justified the seizure of Mason and Slidell in a passage of great power (vol. i, p. 199). Indeed, his letters to the *Daily News* were so strongly pro-Union as to bring upon him the charge of having been retained by the American government to influence English opinion. That he did influence it in favor of the Northern cause there can be little doubt; just as, after the establishment of the *Nation* in 1865, he influenced educated American opinion in behalf of other causes which he had very near at heart.

The second volume tells the story of his life as an American journalist—a story that is familiar to all, though the letters which Mr. Ogden has here published make more plain the cause and the pervasiveness of his power as a moulder of public opinion. At first, it might have been said of the *Nation*, as he had said of the *Evening Post* under Bryant (vol. i, p. 169), that it had "a *hors-concours* air which made up for the comparative smallness of the circulation." But Mr. Godkin's own wide personal acquaintance among the very best representatives of American intelligence made the man himself almost as great a power as his periodical. One sees this in reading his correspondence; and one finds here a marked contrast between him and Dana; for Dana lived an isolated sort of life, eliminating from his work the immensely powerful force of personal character. And so Dana's daily gibes were read by tens of thousands, yet they were forgotten almost as soon as they were read, and few of the causes which he advocated were successful. Godkin, on the other hand, became, slowly but more surely with each year, a vital force—not merely by what he wrote, but by his personal relations with men of light and leading. The offer made to him of a professorship in Harvard (1870) was one evidence of this. The letters written him from England, Germany and Japan

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(vol. ii, pp. 56, 57) give further testimony to the same effect. His power was exerted, not directly upon the mass of citizens, but upon those from whom the mass of citizens get their opinions in the end. And, therefore, this book of Mr. Ogden's is less the biography of an individual than it is the revelation of just how the silent but irresistible forces of political and social change are fostered and directed until they have done their perfect work.

HARRY THURSTON PECK.

COLUMBIA UNIVERSITY.

The Political History of England, 1801–1837. By GEORGE C. BRODERICK and J. K. FOTHERINGHAM. London and New York, Longmans, Green and Company, 1906.—xix, 486 pp.

The eleventh volume of the Hunt and Poole series on English history covers the period from the formation of the Addington ministry to the accession of Queen Victoria. According to the original plan Dr. Broderick, late warden of Merton College, was to have written the volume, with the assistance of Mr. Fotheringham in the portions dealing with foreign politics; but upon the death of the former, in 1903, it fell to Mr. Fotheringham to finish the volume and recast it all for publication—with some of the unhappy results that are unavoidable under such circumstances, especially in the matter of proportion. For instance: the three good chapters on foreign politics after 1815 might very well have been omitted altogether from such a work (which is not a survey of European politics), and the digressions necessary to explain British foreign affairs might have been woven into the narrative with greater effect. Again, the fact that it is called a "political history" will hardly justify giving only twenty inadequate and misleading lines to the trade-union legislation of 1824–25 (p. 204) and leaving Robert Owen out entirely, while devoting two pages (pp. 310–312) to the cholera epidemic and almost a page to the burning of the Houses of Parliament (p. 349).

About one-third of the volume is occupied with a clear and readable narration of the Napoleonic conflict and its attendant domestic politics; the great reform bill and its immediate results fill three chapters; the religious movements, poor-law reform, literature and social progress are disposed of in two chapters; India during the period gets one chapter; and Peel and Melbourne one. Military campaigns, party politics, leading statesmen, diplomatic negotiations and Irish affairs form the chief subjects of consideration and are treated in a smoothly running narrative. The history is in general fair and accurate enough, although

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not characterized by originality of presentation nor based on extensive research in new materials.

Unhappily the volume is marred in many places by vehement expressions and loose characterizations which seem unworthy of so dignified a work. The philosophic calm of the authors who can write fairly and wisely about Napoleon is apparently disturbed beyond measure by democratic agitation, Irish demands and labor movements. Surely it is not bigotry in a reader to hope that the time was past for writing about "the blood-thirsty orgies of the French revolution ushered in by quixotic visions of liberty, equality and fraternity" (p. 174). Hunt, Cobbett, Major Cartwright and other leaders of the agitation for parliamentary reform are called demagogues with a reiteration that arouses doubt of the authors' scientific tranquillity (p. 175 and *passim*). The unfortunate sufferers at Peterloo are described as "victims of reckless demagogy no less than of blundering officialism" (p. 178). Hunt was "puffed up with silly vanity" (p. 179) and was a "violent demagogue" besides (p. 178). Cobbett's works were "violent and delusive writings" (p. 204). Trade-unionists were guilty of "wholesale and cruel oppression" (p. 204), but the act of Parliament making the breaking of mining machinery a capital offence does not appear to be mentioned. The safeguards of the Catholic Emancipation Act are described as securities "against Catholic aggression" (p. 247). O'Connell was "the great Irish demagogue" (pp. 313, 374), and was apparently devoid of any decent human qualities. Our authors carry their vehemence almost to the point of the ludicrous (at least to a detached sense of humor) when they speak of O'Connell's "coarse and outrageous vituperation of the nation which had sacrificed even its own conscience to appease Ireland" by the Catholic Relief Act (p. 252). According to their view, "its adoption was a victory of the educated classes, represented by the nomination boroughs, over the unrepresented masses of the people" (p. 248), and Peel's great defence of it rested "solely on grounds of expediency" (p. 246). Chartism and Spenceian doctrines are confounded with socialism, with a discrimination almost akin to that of an amiable Oxford lady, who called a friend a socialist because he occasionally read newspapers to the inmates of a blind asylum. Strong adjectives are not often convincing or illuminating in common life, even where warranted. Scholars above all want to know what men did and said rather than to hear them abused, however justly. Surely in the republic of letters belligerent historiography ought to have slight countenance.

CHARLES A. BEARD.

COLUMBIA UNIVERSITY.

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La Question agraire en Irlande au commencement du vingtième siècle. By ÉTIENNE BÉCHAUX. Paris, Librairie Nouvelle de Droit et de Jurisprudence, 1906.—472 pp.

The agitation in Ireland at the present moment regarding the land problem shows that it is by no means a settled question. For the past half-century there has been more or less agitation on this subject, which has resulted in repeated legislation by the British Parliament, seeking to solve the agrarian question and to place agriculture in Ireland on a sound economic basis.

The present volume aims to set forth the status of this movement at the commencement of the twentieth century. The author is a lawyer and pleads the cause of the Irish peasantry on the basis of justice. For his facts he relies on history, personal travels in Ireland and conversations with prominent Irish agitators and English parliamentarians. His facts and his pleadings are then arranged, as the author writes in his preface, as follows:

> My work comprises four books: the first gives a summary of the agrarian question to the beginning of the twentieth century and shows how the formation of a peasant proprietorship ought to be the inevitable consequence of preceding efforts; the second book sets forth the improved land conditions at the beginning of the century; the third is devoted exclusively to the law of 1903, to its judicial effects and to its economic consequences; the fourth book presents an account of other factors which have operated to improve agricultural conditions in Ireland, including the results of private efforts and of the state.

It is evident, therefore, that we have before us a book dealing with the history of the agrarian movement in Ireland and its social and economic effects. But the central point is the law of 1903, and the history of agrarianism in Ireland up to that time is treated only in a cursory manner. While the student would naturally wish for a more detailed account of the origin and early development of land tenure in Ireland, which is unique in the land-tenure systems of the world, the author briefly traces an outline of its early history and brings it down to 1847, and from that point enters a little more fully into the history of the movement by a discussion of the laws passed by Parliament at various times to relieve the situation. At no point are the pages dull or uninteresting. The language is clear, and the statements are supported by the texts of the laws or by quotations from parliamentary papers or other reliable sources. And where any doubt might arise

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as to the correctness of the author's translation into the French language, he frequently gives the English phrases also.

The law of 1903, according to the author, has for its final purpose the creation of a peasant proprietorship with the aid of the state. In this law the efforts of Parliament and the demands of justice are in accord. One of the striking features of the book is the recognition by a French writer of the worthy efforts made by the British government during the past twenty years to create a peasant proprietorship and to ameliorate the condition of Irish agricultural laborers. "Their physical and moral wants, their education and the sanitary conditions of their homes have received the attention of legislators" (p. 318). Hence the law of 1903 is characterized as a law of "social and economic reconstruction"; and to show that it is so the author traces the working of the law from August, 1903, when it went into effect, up to January 1, 1905. This law seems so important and far-reaching in its effects on the welfare of the Irish peasantry that nearly half the volume is taken up with a discussion of its provisions and of the practical benefits thus far attained by its operation.

But it is the economic aspect of the Irish agrarian problem which is especially worthy of notice. The author shows what in various countries is regarded as the "economic-size farm," which is defined as an amount of land sufficient, without any other source of income, to support the laborer and his family in accordance with the standard of living of that class of labor in the respective countries. As Ireland is primarily an agricultural country, it is almost axiomatic to say that the welfare of the peasantry depends upon the amount and fertility of arable land. Vast estates and "non-economic-size farms" exist side by side, and the law of 1903 aims to change this by a more equitable adjustment of the size of farms. This is especially true in certain districts which the author designates as "over-populated"—in which the number of inhabitants and the quantity of arable land are so out of relation that a large number of small farms exist from which the tenant is unable to make a decent livelihood. This is the point of the author's contention: that so many small farmers fail in Ireland through inability to secure more land on which to bestow their labor—a point to which the attention of the British government is earnestly called. This is regarded as the chief source of poverty among the Irish peasantry, the cause of emigration, the reason of agitation; and the solution of this problem, it is believed, lies in the creation of a peasantry who own their land and enough of it from which to make a good living.

The other factors which have entered into the improvement of agri-

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cultural conditions, and which are briefly discussed, are the agricultural organization society, coöperative associations and the department of agriculture. The aims of these organizations are described and a review of the work accomplished is given. And although a great deal more could have been said along these lines, the author says enough to give the reader an idea of the forces at work to ameliorate the condition of the Irish peasant class, and to give a suitable setting to a book which is impartial, interesting and commendable.

JAMES B. MORMAN.

UNITED STATES DEPARTMENT OF AGRICULTURE,
WASHINGTON, D. C.

At the Works: A Study of a Manufacturing Town. By Lady BELL. London, Edward Arnold, 1907.—xvi, 272 pp.

The manufacturing town is Middlesbrough; the authoress is the wife of Sir Hugh Bell, the great ironmaster, and her subject is the social condition of the workers employed at the blast furnaces and other iron works. The book thus forms a useful supplement to the *Reports* of the Mosely Commission (1903) and the reports of the British Iron Trade Commission on *American Industrial Conditions and Competition* (1902). Higher wages and the greater use of mechanical appliances form the main differences between blast-furnace practice in the United States as compared with Great Britain. Mr. P. Walls of the National Federation of Blastfurnacemen said, in his Mosely report, that "considering that blastfurnacemen in the North of England work three shifts of eight hours, and that the American works two shifts of men on twelve hours, the former are as well paid as the latter. In most instances the twenty-four hours' money just about balances. . . . When we come to what is termed the common labourer the Americans get practically double the wages paid in England." This extract gives us a standard of comparison.

At a Middlesbrough blast furnace a laborer works from 6 A. M. to 5 P. M. (including mealtimes) for 3*s*. 6*d*. a day, and from that point wages range upwards to the furnace-keeper, who gets from £2, 10*s*. to £4 for eight hours' work. Lady Bell says:

> Out of 1270 people paid in a given week, 23 (these were boys only) received under 10*s*. per week, 50 more boys received under 20*s*., 96 men, mostly laborers, received under 20*s*., 398 received between 20*s*. and 30*s*., 410 between 30*s*. and 40*s*., 235 between 40*s*. and 60*s*., 58 between 60*s*. and 80*s*., and four over 80*s* [p. 48.]

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Stability of employment is high, 440 out of 585 workmen having worked for the same employers over five years. We thus appear to have the possibility of considerable prosperity among the working classes of the town. But here Lady Bell comes in to translate these bare figures into terms of human life, with due allowance for human weakness and incapacity, and the picture takes another hue. Although the blast-furnace workers are picked for their strength, so great are the demands made on their physique that more than half of them are spent at fifty and have to take lighter employment. Exposure to extremes of temperature and to poisonous gases makes them liable to disease and accident, and though compensation must now be paid for accidents the loss and expense entailed are a severe burden.

A great French writer [says Lady Bell] has said that the cardinal difference between the lot of the rich and the poor is that the former have more margin in which to remedy mistake and misfortune. In studying the lives of the workers described in this book, we become convinced of the truth of this saying. The path the ironworker daily treads at the edge of the sandy platform, that narrow path that lies between running streams of fire on the one hand and a sheer drop on the other, is but an emblem of the Road of Life along which he must walk. If he should stumble, either actually or metaphorically, as he goes, he has but a small margin in which to recover himself. But it is good to think that in face of these conditions—it may be partly, indeed, because of them—many of the ironworkers of the North hold strongly and undauntedly on their way [p. 271].

In very many cases the margin is very narrow. Out of 900 cases investigated, 300 were below or on the margin of poverty without sufficient food or clothing. Rent for a four-roomed cottage is always high—from 3*s*. 6*d*. to 7*s*. 6*d*. per week, mostly about 5*s*.—"in nearly all the budgets I have been able to verify, entirely out of proportion to the rest of the expenditure" [p. 68].

The two chapters on "Wives and Daughters" are perhaps the most valuable in this valuable book. Nowhere else can such a picture of the working woman's life be found. Conditions of men's labor differ in different countries and times, wages are raised and hours shortened, but the labor of the workman's wife in the home has been practically unchanged. She is the helot of modern industry and yet the most important person in it, for upon her capacity or incapacity depends the real reward of the great majority of our population of today and to a great extent the character and efficiency of the workers of the future. To depict such a life truthfully requires great knowledge, great insight

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and great sympathy, and all these qualities Lady Bell has brought to the task. It is difficult to read these pages without a pain at the heart. When motherhood, the crowning glory of woman, becomes a tragedy in the midst of mean surroundings and petty inconveniences, the problem of racial degeneration becomes very real. Lady Bell rarely allows herself to become impassioned, but in every paragraph the comparison is drawn with the middle-class woman sheltered from temptations, sheltered from over-work, sheltered from the results of her own inefficiency, until the cumulative effect is more powerful than volumes of indignation.

Much of interest could also be quoted from this book on the lack of recreation in our new manufacturing towns, except such as is to be found in the public-house, in betting and in gambling. Betting, rather than drinking, is the vice of the English industrial classes and is even harder to eradicate. On the other hand, it is encouraging to find from the chapter on reading that, out of 200 houses, in 37 the inmates were "great readers," and in 25 they read books described by Lady Bell as "absolutely worth reading"; in 58 they read newspapers only and in 50 novels only. This is probably as good a result as any other class could show.

To sum up: this book is emphatically worth reading; it is clear, restrained, straightforward and sympathetic; no social reformer should be without it, and still less any economist who wishes to see book terms translated into facts of life.

HENRY W. MACROSTY.

LONDON SCHOOL OF ECONOMICS.

Municipal Ownership in Great Britain. By HUGO RICHARD MEYER. New York, The Macmillan Company, 1906.—xii, 340 pp.

Poor, deluded Britain! Happy, wise America! The trifling corruption that is alleged to have existed at infrequent intervals in a few American cities pales into insignificance as the author of *Municipal Ownership in Great Britain* unfolds to the startled reader the colossal stupidity of the British municipalities. Nearly forty years ago the doctrine got a footing in Britain that franchises granted for public-service industries and involving the use of special easements in the highways "should be subjected to special limitations and special taxation designed to secure to the public at large a share in their profits." The result was the enactment of the Tramways Act of 1870, under which the Board of Trade (one of the most important administrative bodies of the British government) was authorized under certain conditions to issue

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provisional orders for the construction of tramways. Any municipal corporation might secure such an order and build its own tramways, but it would not be permitted to operate them. Any private company might secure an order with the consent of the municipal authority concerned. These provisional orders were to be laid before Parliament and, if not disapproved, were to become effective as local acts. Thus it seems that no tramway could be constructed without an order from the Board of Trade, issued subject to disapproval by Parliament. In the case of private ownership the order required also the consent of the municipal authority.

Professor Meyer asserts that under this act, the principles of which have since been applied with some modification to the electric lighting and telephone industries, private initiative has been paralyzed in British cities. He also asserts that the municipalities, although under the law they have the power themselves to develop these public utilities, have utterly failed to satisfy the demands of a progressive age. He asserts that the municipal governments of British cities have nowhere used the electric street railway for the purpose of decentralizing or suburbanizing population. "In this matter," he says, "the British cities have shown an indifference and a disregard of the public health, physical as well as moral, that for brutality has no parallel in the records of private industry" p. 324). He claims further that the experience of Great Britain shows public bodies not only to be unable to build up new industries, but also to be unable to carry on industries already established. He says that British cities have refused to permit the establishment of electric lighting plants for fear of exposing the municipal gas plants to competition. He says that they have refused to expose even their municipal lighting plants to competition with private establishments for the supply of electricity in bulk for power. He says that the British government has persistently refused to allow the telephone to compete with the telegraph, the latter being a government monopoly. He sums up the results of the British municipal ownership policy as follows:

> The upshot of thirty-five years of action upon the doctrine that the public-service industries that make use of the public streets differ from ordinary trading and manufacturing ventures, and must be made to share their profits with the public at large, is that the people of the United Kingdom have at their disposal about one-quarter the street railway facilities, one-third the electric lighting facilities, and less than one-quarter the telephone facilities, that they would have to have before they could be said to be as well supplied with these facilities as are the people of the United States.

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Furthermore, fully 120,000 persons who might be making a living in the United Kingdom in the electrical industries have been obliged either to emigrate from the United Kingdom or to join the ranks of the unemployed. Finally, there is reason to fear that the Tramways Act, 1870, and the Electric Lighting Acts, 1882 and 1888, have caused England, to repeat the words of one of England's most brilliant mechanical engineers, the late Sir Frederic J. Bramwell, "to lose forever her proper position in the manufacture and supply of electrical machinery" [p. 326].

Professor Meyer lays particular emphasis upon the fact that the municipal corporations have great influence in Parliament. He charges that this influence is often used unjustly and to the detriment of the public interests. In his view, conditions in England have proved "that great power, wherever lodged, is dangerous." His line of argument is that when this power is concentrated in the hands of municipal corporations which are leagued together in one compact organization for the purpose of influencing Parliament, the danger of abuse is even greater than we are accustomed to think is the case when power is lodged in franchise-holding companies.

Great power wherever lodged is dangerous, but the way to meet that danger is not forever to be changing the person or the place where power is lodged. The way to meet it is to train the citizens of the country to such a pitch of civic virtue and political intelligence that power cannot be abused no matter where lodged. To pursue any other course is merely to jump from the frying pan into the fire [p. 328].

It would hardly be useful to enter into a detailed examination of the evidence presented by Professor Meyer to substantiate his conclusions without a more intimate knowledge of the facts than the reviewer possesses. It is to be hoped that sufficient information may be made accessible by the report of the Civic Federation Committee to render criticisms and comparisons reasonable and safe. Without such information, the reviewer must confine himself to stating the author's point of view and conclusions, with perhaps a few suggestions that may throw light upon their reasonableness. In his attack upon municipal ownership Professor Meyer maintains:

(1) That British municipalities have shown utter indifference to the welfare of their people in the matter of public-utility services.

(2) That there is no reason for attempting to diminish the power exercised by private corporations over the public highways, for the reason that the remedy against the abuse of irresponsible power is not to dislodge it, but to make those who hold it immune to temptation by the cultivation of civic virtue.

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(3) That franchise monopolies, following the dictates of self-interest, will give lower prices than municipal corporations, with a soft spot in their hearts for the ratepayers.

(4) That public-service corporations should be allowed to use the public streets and profit by them, without their profits being restricted any more than is the case with ordinary competitive enterprises.

Without attempting to combat the deductions drawn by Professor Meyer from the experience of British cities with the municipal ownership of public utilities, it is perhaps worth while to note that certain theories appear to be held in Great Britain which are not generally accepted in the United States and that the conditions existing in British and in American cities are in at least one important respect dissimilar. The British theory of municipal ownership appears to have been that public-service industries should be conducted for profit, the profit to be turned into the municipal treasury for the relief of the rate-payers rather than into the pockets of franchise magnates and speculators. While most Americans would agree with the view that if profits are to be made out of street monopolies they should go into the treasury of the people who own the streets rather than into private pockets, they would not necessarily assent to the doctrine that public-utility industries should be conducted for profit at all. It is a very general opinion, in this country, that public-utility services, which are matters of practically universal necessity, should be rendered as nearly as possible at cost. In the operations of government, the governmental idea, that is to say, the promotion of the public interests, should always be dominant. If a city is to manage public utilities, it should manage them with primary regard to the general welfare of the citizens. If the British cities have engaged in the operation of public utilities without substituting public for private motives in the conduct of those utilities, they have certainly failed to get the spirit of municipal ownership and operation as a political doctrine.

It is to be remembered further that British cities are governed by the business classes. All authority rests in the council. Councillors are unpaid, and therefore none but men of means can afford to seek positions on the governing body. The people have no power of initiative. The referendum is seldom used, and there is no such thing as the recall. In other words, British cities have a government that is not strictly democratic. It has generally been supposed that this form of government is efficient. It is hardly to be expected, however, that evil municipal conditions will be attacked by the citizens who profit most by the existence of such conditions. The opponents of municipal owner-

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ship in this country have commonly admitted that it has been a success in British cities. They have said, however, that conditions were different in American cities, and that "politics" and universal suffrage would make municipal ownership a failure here. Now that Professor Meyer, Mr. Robert P. Porter and others have shifted the ground of opposition and are disputing the fact of the success of municipal ownership in Great Britain, the advocates of municipal ownership may follow them upon this new ground and contend that, even if the system has been a failure in Great Britain, it is not proven that it would be a failure in the United States. It may plausibly be argued that the democratic spirit and the widespread interest of the lower and middle classes in politics would render impossible, in this country, the reactionary and shortsighted policy which, according to Professor Meyer, has been characteristic of the British towns in dealing with public utilities.

The best that can be said of Professor Meyer's book is that it is an able *ex parte* statement of the case against municipal ownership in Great Britain.

DELOS F. WILCOX.

DETROIT, MICHIGAN.

Die Entwicklung des deutschen Städtewesens. Erster Band: *Entwicklungsgeschichte der deutschen Städteverfassung.* By HUGO PREUSS. Leipzig, B. G. Teubner, 1906.—379 pp.

At one of the portals of the royal palace in Berlin are two large groups in bronze, "the horse tamers," presented by Czar Nicholas to Frederick William IV of Prussia in 1842. One of these represents a fiery steed attempting to plunge forward but checked in mid-course by its trainer; the other, an equally fiery beast which has been forced, foaming and screaming, to its haunches by a second brutal tamer. Taking into account not only the character of the two groups but also the characters of their donor and recipient, it is not strange that a political wag promptly dubbed them "*der gehemmte Fortschritt*" and "*der beförderte Rückschritt.*" "Progress resisted, reaction assisted"—the translation has at least the merit of preserving the jingle of the original—and the words would have served capitally as the motto of Dr. Preuss's volume on the *History of the Evolution of the German Municipal Constitution.* The author, taking his own statement for it, is not one of those "whose measure of scientific objectivity consists in the uncritical canonization of existing conditions." In other words he dares to indulge in extremely plain speaking regarding the often stupid

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or self-interested interference in German municipal government of the paternalistic state, allied, particularly as it is in Prussia, with a reactionary feudal aristocracy. Nor is he favorably impressed with the plutocratic three-class and other complicated election systems devised to cripple popular participation in city affairs. Keen and trenchant criticism coupled with a fresh and breezy style, the learning of a university teacher of administrative law combined with the practical experience of many years as a municipal councillor of Berlin—decidedly the book which Dr. Preuss has given us *schmeckt nach mehr*. The second part, which he promises, will be more strictly modern in scope and can hardly fail to be as interesting as its predecessor. As a whole the two volumes will present *The Evolution of the German Municipal System;* but while the first is primarily historical in character the second is to be devoted to the extremely varied differentiation of municipal functions which has taken place in comparatively recent times and to the problems for the future development of municipal life involved in the continuation of this process.

On the historical side Dr. Preuss's work differs from that of most of his predecessors, first, because it covers the whole development of German municipal life, and second, in that the larger share of attention is given to the modern period of his study. German scholarship has loved to lose itself in rather futile discussions regarding the origin of municipal institutions on the soil of the Holy Roman Empire, and many bulky volumes have been published on certain obscure questions concerned with the internal mechanism of cities during the middle ages. The more valuable results of these investigations are reviewed briefly in the present volume, and sometimes, where the conflict between them is too sharp, reconciliation is attempted with scholarly acumen and, what is better, with exceedingly good common sense.

Extraordinarily interesting both in matter and manner of presentation is the chapter on the *Blütezeit* of the cities during the middle ages. Population and social conditions as they have been developed in recent studies by Bücher and others; the relation between high real-estate values and the larger commercial undertakings of the time; the failure of German cities to carry their civilization into the surrounding country; the fiasco of the Reformation from the democratic point of view; the effect of the introduction of the Roman law in strengthening the power of the territorial princes—these and other scarcely less interesting topics are marshalled with admirable order and precision into an impressive whole. No one is more alive than Dr. Preuss to the significance of the brave old device "*Stadtluft macht frei*" for all

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later constitutional development in a democratic direction, but on the other hand he sees clearly enough the many blemishes of the "palmy period" of mediæval city life in Germany.

The following era of economic decline, political guardianship and petty corruption under the absolute territorial state is treated more fully and with equal success. Stein's enormous contribution in 1808, not only to the regeneration of municipal life but to the salvation of the Prussian nation as well, is naturally made the starting-point and central feature of the remainder of the book. Following Max Lehmann's capital biography of the great imperial knight, emphasis is laid upon Stein's direct indebtedness to the legislation of the Constituent Assembly. Dr. Preuss perceives little progress and much retrogression in German municipal constitutions since 1808. In 1876 the Prussian government itself fathered a sweeping reform measure designed to bring about some degree of unity in the twenty municipal and rural communal forms of organization then existing. The situation was officially declared "impossible in the long run," yet the bill failed, and now after the lapse of thirty years effectual reform seems more distant than ever.

There is little doubt that Dr. Preuss's work as a whole will be vigorously criticised on the ground that he has minimized the services and emphasized the reactionary attacks of royal and princely governments upon city constitutions in Germany. Considering the adulation, sometimes not a little servile and self-seeking in character, which is so often lavished upon the Hohenzollern and other reigning families, the courageous criticism of the present work is from any point of view a welcome relief. In defense of the author it may be said that he cannot be accused of blindness to the weakness of popular movements in Germany. It would be easy to cite a score or more of emphatic references in his pages to this point. In no way does the work better deserve its title of "evolutionary" history than precisely in this—that it brings out fully the inevitable character of all the principal developments which it describes. If the princes are not spared just criticism, neither does the fat, quiescent, money-grubbing German burgess escape. From the few references made to the forthcoming volume, one is led to expect that Dr. Preuss will have more to say in commendation of the achievements of German municipal self-government during the past fifty years within the narrow limits that the royal bureaucracy has drawn about it. From an American point of view the book is chiefly valuable because it brings into sharp contrast the chief difference between our own and the German municipal system. Here, inefficient and often corrupt

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administration upon the basis of popular government; there, efficient and honest administration upon the basis of an unpopular and, in wide circles, cordially hated bureaucratic government. The choice of two evils is hard; but we, at least, can cashier our rulers without violent revolution.

ROBERT C. BROOKS.

SWARTHMORE COLLEGE.

Die Zuckerproduktion der Welt: Ihre wirtschaftliche Bedeutung und staatliche Belastung. By H. PAASCHE. Leipzig, B. G. Teubner, 1905.—vi, 338 pp.

Der Zuckerhandel. By OTTO PILET. Leipzig, B. G. Teubner, 1905.—92 pp.

Die Zuckerfabrikation. By H. CLASSEN and W. BARTZ. Leipzig, B. G. Teubner, 1905.—x, 270 pp.

Interest in sugar, judging by the output of European literature on the subject, seems now greater than ever. The so-called "sugar problem" continues to receive more elaborate treatment than any other agricultural theme, not to mention the current discussions of the various phases of the topic in the dozen or more special periodical publications. To systematize and coördinate this bewildering mass of new material, rather than to present new theoretical solutions of a problem that "will not down," appears to have been the aim of the above-cited authors, each one of whom is a leading authority in his special field. The three volumes form parts of a large collection of handbooks on commerce and industry (*Handbücher für Handel und Gewerbe*) published by the Leipzig firm of Teubner.

The first of the works under review may be regarded, in its general arrangement and principal conclusions, as a continuation of the author's earlier book, which appeared in 1891 under the title *Zuckerindustrie und Zuckerhandel der Welt.* The main thesis of the earlier work is that in the world's economy there is room for both beet and cane sugar, and that the social disadvantages under which production in the tropics is carried on at least offset the purely natural advantages, if any, which the cane-sugar industry may have over the European beet-sugar industry. In the present volume this idea is reiterated with even greater emphasis. In certain particulars the author's views have changed, and some of his original conclusions have been refuted by later developments. Especially is this true as regards his discussion of the development of the American beet-sugar industry. The con-

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tinuance of beet-sugar experiments during the eighties, notwithstanding repeated discouraging results, was then ascribed in part to the rottenness of American conditions (*Verkommenheit der amerikanischen Zustände*), though even at that time the author could not refrain from complimenting the patience and perseverance of the Americans.[1] The relative success attained after fifteen years of experimentation and financial sacrifice is noted by the author in his new book; and he declares that the American market has been lost to the German sugar trade. He bases this conclusion, however, less upon the fact that the beet-sugar industry has developed to such an extent as to be able to supply about twenty per cent of the country's demands, than upon the peculiar fiscal policy adopted by the United States, particularly towards its dependencies and towards Cuba. On page 88 of the present work Dr. Paasche not only admits that the domestic production combined with the imports from the dependencies and from Cuba may supply the entire demand of the country within the near future, but he even reckons with the possibility of an extension of the sugar industry to such a degree that domestic prices will no longer reflect the duty. He therefore counsels the American producers to "go rather slow in the realization of the dream of supplying the domestic market exclusively with domestic and colonial sugars."

In the chapter devoted to the Hawaiian Islands we learn, however, that the sugar industry of those islands is and is bound to continue to be a "hot-house product"; that the cost of production there is so high that but for duty-free admission to the mainland the sugar industry would find it difficult to exist; and that further profitable extension of production in the islands under present conditions seems hardly possible. The latter view is entertained also with regard to Porto Rico's possibilities.

A perusal of the entire book produces the impression that the author is inclined to underrate the possibilities of tropical sugar production. This is true even of his discussion of sugar conditions in Cuba, where the main difficulty in the development of the industry is found to be the lack of a sufficient labor supply. While it may be granted that the future of the sugar industry in Cuba, as well as in the insular possessions of this country, depends chiefly upon a proper adjustment of the labor question, the student of the sugar question should not underrate the importance of preferential legislation and other fiscal measures. That recent developments in Cuba, resulting in more active interference

[1] Paasche, Zuckerindustrie, p. 15.

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of the United States government in Cuban domestic affairs, will stimulate American surplus capital to seek investment in Cuba cannot be doubted and has been discounted by European sugar interests at large. From this stage, however, to free admission of Cuban sugar is a long step, even assuming the "manifest destiny" of Cuba to become part of the United States. Standing in the midst of political agitation and helping, in his quality of vice-president of the Reichstag, to shape the policies of the German Empire, Dr. Paasche, in discussing foreign conditions takes—quite unconsciously, perhaps—the national point of view, emphasizing those tendencies which are in harmony with national policy and giving less weight to developments of different character. This remark is not intended in any way to belittle the scientific and practical importance of the work. The erudition of the author, his intimate acquaintance with the principal sugar areas—in many cases the result of personal study of local conditions—and his clear exposition of the material make the work a standard source of information on contemporary methods of production, on yields and cost of beet and cane sugar, and on the great commercial movements and various modes of taxation of sugar in the principal countries of the world.

Mr. Pilet's book on the organization of the German sugar trade is written by a practical business man and is chiefly descriptive in character. Its first and more important part gives the main data regarding the domestic trade in refined and raw sugar, the export trade, the trade in molasses and the various institutions and organizations designed to promote the common interests of the trade. Of particular interest to the economic student are the chapters devoted to the export trade and to speculation in sugar. It is interesting to note how growing exports caused the gradual adoption of minute, uniform, standard rules affecting the conditions of sale and delivery, and brought about the acceptance of certain types or grades of sugar as a basis for price calculations and for quotations which may be said to rule the world-market prices of sugar. The chapter on sugar futures contains a short account of the German legislation on this matter, of its effect on speculative dealings in the principal markets and of the more recent attempts to regulate these dealings by the establishment of the so-called *Liquidationskassen*. These latter institutions, by requiring from speculators a deposit proportional to the amount of the obligations incurred and additional contributions in case of unfavorable price fluctuations, are said to have served as a wholesome check upon excessive speculation and to have prevented such demoralization of the market as brought on the crisis of 1888–89. A chapter on the workings of the (now defunct) German

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sugar cartel, which is barely mentioned in Dr. Paasche's work, gives some interesting data, little known outside of trade circles, in explanation of the methods used by the combination to secure compliance on the part of the trade with the so-called cartel-clause in sugar contracts.

The interest of the economic student in the third work noted is but indirect. The scope of the two treatises which it includes, dealing with the manufacture and refining of sugar, is mainly technical; although the introductory historical chapter, tracing the development of the German sugar industry from its very beginnings, and another chapter on the cost of manufacture contain highly instructive data regarding the economics of sugar production. Dr. Claassen points out that while, on the average, the cost of sugar production is smaller for the larger factories, this general tendency does not manifest itself in all cases. In some instances an increased demand for beets may cause so great an increase in the cost of transportation as to neutralize the decrease in the cost of manufacture. In other instances the initial cost of an increase in the size of the plant may prove so high as to offset the economies of subsequent production on a larger scale. In all such cases, larger economies may be effected through the application of more perfect technical methods than through an increase in the size of the plant. A glance at the cost figures, on page 103 of this volume, shows that some of the smaller establishments, either because of their more favorable location or because of their technical superiority, have lower cost figures than some of the larger plants.

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Das Gesetz der Güterconcentration in der individualistischen Rechts- und Wirtschaftsordnung. Von DR. STEPHEN WORMS. Erster Halbband: *Das Gesetz der Güterconcentration und seine Bedeutung für die Wirtschaftspolitik.* Zweiter Halbband: *Die Aufgaben der Socialpolitik gegenüber den Gruppen ohne Wirthschaft.* Jena, Gustav Fischer, 1901, 1903.—xiii, viii, 483 pp.

Under conditions of unrestricted individualist economy, by virtue of the laws of exchange and price formation, a continuous conflux of wealth takes place along two lines: (a) From smaller property holders to larger ones, and this the more intensively the larger the concrete property is. (b) From buyers of monopoly goods to monopolists. The conflux of goods according to these two tendencies is a general economic phenomenon, an economic law: we call it the law of the concentration of wealth.

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This broad conclusion sums up the theoretical division of Dr. Worms' valuable work, which falls into four parts. In the first the author lays his foundations by developing a theory of distribution; in the second he suggests its lessons for public policy, rejecting socialism and declaring for an individualistic *Socialpolitik;* and in the the third he works out the details of such a policy as regards the industrial groups below the level of economy, that is, unable to make regular provision for the future. He promises to round out his work in a future volume discussing the proper limits of public interference with existing forms of production and exchange.

The theory of concentration here developed deserves careful attention. We can only suggest the results of a hundred and fifty pages of close reasoning. Basing his work squarely on the Austrian theory of value and employing all the subjective-objective-absolute-relative paraphernalia so offensively yet indispensably familiar to modern students, the author examines first the direct and then the indirect effects of exchange on the position of the exchanging parties and of all other persons in economic relations with them. For this purpose he uses arithmetical examples after the Austrian fashion, a fashion that makes theory beautifully clear, yet always leaves one with a lurking suspicion that some untenable hypothesis has been inadvertently dragged in. Our author, however, tries to compare each of his hypotheses with facts. His argument in a word is this: The direct effect of a particular exchange is to improve the economic position of the poorer party as compared with the richer, and to make them both better off by comparison with all persons excluded from the exchange; but the indirect effect is far different. Taking the results of exchange as a whole, they work steadily to the advantage of the rich, for the following reasons: First, they have the choice of a greater variety of substitution goods; hence any individual good is of less importance to them than to the poor. Second, because a large mass of goods often has a value in production far greater than the sum of values of its units taken separately, the rich again have a marked advantage. Note the economy of large scale production. Third, because of the greater economic sacrifice which any given exchange imposes on the poorer person, he will so much the less often be economically able to make exchanges and so gain their advantages. Fourth, the richer one is, the wider may be the circle of his economic operations, and hence his opportunities for profit will be not only more numerous but richer. Consequently we are led to the law stated in the beginning, the logical consequence of whose unrestricted working is a constant decrease in

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the number of independent producers, with a constant thrusting down of the poorer members of society to lower levels of poverty and distress. This law is a law of exchange, not conditioned on production, and no change in the form of production can prevent its working. In this contention lies the kernel of the book, and Dr. Worms must be allowed to have made good his contention. But at the next step disagreement is possible. Concentration of wealth, he says (p. 158), is intensified by individualistic production but is not dependent on it. True enough; but we might equally well say that concentration is intensified by individualistic exchange but is not dependent on it. For both production and exchange in an individualistic economy are causes of concentration, either of them alone competent to produce the phenomenon, each working to intensify the other. A complete theory of concentration must take both into account. Natural monopoly, restriction of output to control prices, profits from franchises, the phenomena of large scale production—all these and a dozen other forces making for concentration have to do with production no less than with exchange. Dr. Worms has shown that the game of exchange is played with loaded dice; he has not shown that the game of production, under certain conditions, is not played in the same way. Possibly his argument is not intended to be read in that way, and his concluding volume may show the criticism to be premature.

The practical conclusions from the theory may be briefly stated, although their discussion occupies two-thirds of the volumes before us. Socialism, which Worms insists is Marxism pure and simple, is theoretically false and practically futile, because it attempts, by socializing production, to prevent concentration, which is due to exchange. Here again we take exception. Most great inequalities originate in special privileges in production; to remove this source of inequality would so far forth limit the working of Worms's law, which takes inequalities for granted, and only shows, after all, how they lead to further inequalities through the normal working of exchange. Marxism is sufficiently vulnerable on the side of production without attempting a flank movement in the field of exchange. Are socialists not likely to rejoice in an attack that yields to them the validity of their law of concentration and furnishes new weapons wherewith to defend that law against future attack? May they not urge, moreover, that they would so largely socialize exchange as practically to prevent the law from working? Dr. Worms' real objection to socialism, however, appears to rest on his conception of it as the negation of individual freedom.

Our author is opposed, not to concentration, but to too much con-

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centration, and in his second "half-volume" he outlines an individualistic *Socialpolitik* which he considers adequate to prevent its extreme results. It is a policy of repressive and preventive poor relief, employment offices and labor distribution, and compulsory workingmen's insurance against accident, sickness, invalidism, old age and unemployment. His elaborate theoretical discussion of these measures once more impresses painfully on the American student the backwardness of our own country in matters of social policy, but also suggests a larger question, for the answer to which in Dr. Worms' final volume we shall wait with interest: How great economic inequality will an intelligent democratic society find it expedient to permit? Will the citizens of a democracy rest content with measures like workingmen's insurance, which alleviate some of the most evident evils of inequality, or will they turn sanely yet resolutely to the task of removing the great sources of inequality, which after all lie in economic privilege rather than in the mere phenomena of exchange? Both tasks are necessary; but judging from the present temper of the American people, they at least are likely to undertake the latter one first.

HENRY RAYMOND MUSSEY.

UNIVERSITY OF PENNSYLVANIA.

Due Process of Law under the Federal Constitution. By LUCIUS POLK MCGEHEE. Northport, Edward Thompson Company, 1906.—vi, 378 pp.

The "due process" clauses of the fifth and fourteenth amendments clothe the federal supreme court with power to determine the constitutionality of all governmental interference with private rights. Individual liberty is safeguarded by our fundamental law, but the instrument which affords the protection does not set forth its requirements. What is pleasing to the court is due process of law. The court, in its turn, has eschewed definition and chosen "the more conservative course of ascertaining the intent and application of the phrase by the gradual process of judicial inclusion and exclusion, as the cases presented for decision require, with the reasons on which such decisions are founded." Professor McGehee's study of the provision traces its lineage back to the "*per legem terrae*" of Magna Charta, and shows by a review of supreme court decisions the governmental action which it inhibits and permits. He deals with the persons and rights protected by due process; the requisite jurisdiction and procedure of courts and administrative tribunals; and the paramount rights of the state, as exercised by virtue of the powers of taxation, eminent domain and the wide and ill-

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defined police power, including the protection of the public health and morals, the regulation of the rates and activities of public-service corporations and the promotion of economic prosperity and the general welfare.

The work is evidently not designed for the practitioner and is little adapted to his needs. For him the more exhaustive treatises on special branches of the law, dealing with all the constitutional considerations involved, must outvalue any isolated treatment of a single provision. But to the student of political science Professor McGehee has given an admirable outline of the practical results of the American experiment of incorporating in a written constitution restraints upon every department of government, and of making the supreme court of the nation the final arbiter in disputes between the citizen and state or federal authorities. The volume is mainly a compilation, a chronicle of decisions interspersed with excerpts from opinions—a method of treatment rendered somewhat necessary by the persistent refusal of the courts to lay down general principles. The reach of the topic and limits of space forbid extended discussion of cases or criticism of underlying theories. Such a wealth of material must necessarily receive inadequate treatment in a book of less than four hundred pages.

The author emphasizes in his preface that due process is in course of active growth, that contemporary public opinion on economic and moral questions, on the functions of the central government in respect of the states and on the duties of all government with regard to its citizens are reflected in the minds of judges and become woven into the precedents of our jurisprudence. It is to be regretted that his development of the subject does not trace this growth and indicate the tendencies of the course of judicial decision. It may be said, however, that changing public opinion reflects itself in legislatures and courts simultaneously, and its course is to be discerned more easily from the study of statutes than of judicial opinions. The courts have not often reversed themselves. It is but a surmise that a decision rendered to-day would not have been possible a decade ago.

After the book was sent to press, the supreme court announced the astonishing decision of Haddock *v.* Haddock (201 U. S. 562)—a reversion to the old days of judicial necromancy, supposed to be forever dispelled by Atherton *v.* Atherton (181 U. S. 155), when a man was held to be the husband of a woman who was not his wife. Professor McGehee points out in his preface the legal atrocities involved in this recent utterance, and he suggests that the opinion may be due to this formulative influence of current views on social and moral topics which

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he has indicated. While public opinion may properly influence the court in cases involving the spheres and methods of governmental activity, it should hardly affect decisions upon fundamental legal problems of jurisdiction.

The author joins in the wide-spread disapproval of the Ju Toy case (198 U. S. 253), and falls into the common error of asserting that it raised an executive official above all regular courts by allowing him to determine finally the existence of his own jurisdiction. The court, however, decided explicitly that facts involving citizenship were consigned to the final determination of the administration, and that the administrative decision in the particular case was within the jurisdiction conferred by statute. The true significance of the decision lies in the holding that the personal liberty of citizens, like their property rights, may depend upon administrative action without judicial interposition, provided such proceedings are deemed essential to the public welfare. Executive interference with personal liberty has long been held due process in the collection of taxes.

Cases arising under the "full faith and credit" clause involve the question whether the proceedings in the original forum were due process. The discussion of this subject illustrates the inadequacy of treatment from which the book suffers. The matter of the situs of choses in action for purposes of garnishment deserves fuller and more analytical consideration than that accorded by one brief sentence. The author cites with approval the case of Chicago *etc.* Railway Company *v.* Sturm (174 U. S. 710), which discovered due process in garnishment proceedings in a jurisdiction wherein the garnishee resided although the principal defendant was not served with process. He fails to note the extension of the doctrine in Harris *v.* Balk (198 U. S. 215), where the creditor of the garnishee was held bound by proceedings in a jurisdiction in which the garnishee was served during a temporary sojourn, on the astonishing theory that the plaintiff was the representative of the defendant and the situs of the latter's claim against the garnishee traveled about with the person of the garnishee. The rule is a flagrant violation of the fundamental requirements of notice and hearing. The court in a dictum reaches a decent practical result by suggesting that the principles of justice demand that the garnishee, when later sued by his creditor, should not be allowed to plead the judgment in the garnishment proceedings unless he gave actual notice thereof to his creditor to afford him opportunity to appear and defend his claim. The principle of the decision, however erroneous in theory, is re-affirmed in Louisville *etc.* Railway Company *v.* Deer (200 U. S. 176).

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Such inadequacies as appear in the book are necessarily incident to the scope and purpose of the work and the method of treatment. We have seen that the definition of due process must consist in an enumeration of the acts which may be done in its name. Such an enumeration the author has given us most satisfactorily. He displays a sense of proportion and a faculty for generalization, arrangement and concise and exact statement which render his work lucid and readable and remarkably free from the clumsiness of much legal writing. To those who desire a deeper knowledge of the subject, he has furnished an excellent handbook to be used in connection with a more detailed study of the decisions referred to.

THOMAS REED POWELL.

COLUMBIA UNIVERSITY.

The American Idea. By LYDIA KINGSMILL COMMANDER. New York, A. S. Barnes and Co., 1907.—xii, 332 pp.

This discussion of the question, whether the coming of the small family means race suicide or race development, is valuable chiefly for the large amount of first-hand testimony it contains touching the causes of our falling birthrate. The author cites no new statistics, but her numerous interviews with physicians, spouses and parents throw much light on the movement of opinion adverse to the large family. The book abounds in pithy and salty expressions served hot from the interviewer's note-book. How some Taine of the twenty-first century will pounce upon such naïve revelations as these: "Nell has a lovely husband. He says he doesn't want her to have any children. That's what I call a good, kind-hearted man, and it shows he's really fond of her." "Have one, or at the outside, two. I believe in a family, but not in a regiment!" "I don't see but what I had a right to have them (eight children). Of course people laugh at me, but maybe I can laugh at them some day." "I don't like Ellen, I never did. I can't help laying it up to her that she has such a lot of children." What a light we should have on the infecundity that worried Cicero, if only an efficient interviewer like Mrs. Commander had collected the private views of his time!

In addition to the causes usually assigned—ambition to rise, the growth of wants, the emancipation of women—the book seems to show that the spread of economic dependence is playing a great part in cutting down the family. The American pay-envelope masses have keen foresight, and unless the sense of insecurity that haunts those who live from a job instead of from a farm is relieved by making employ-

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ment more stable, none among the coming urban millions will have children, save the paupers, the rich, the priest-ridden and the green immigrants. There can be no more terrific arraignment of the brutal industrial practice—much lauded by the prophets of efficiency—of throwing a man out at forty or forty-five on the ground that "this is a young man's country."

EDWARD ALSWORTH ROSS.

UNIVERSITY OF WISCONSIN.

The Political Thought of Plato and Aristotle. By E. BARKER. London, Methuen and Company, 1906.—xxii, 559 pp.

Somewhat of hardihood is required in one who would put forth an exposition of the political philosophy of Plato and Aristotle. The thing has been done very often and very well; and a justification for doing it again is not easily hit upon. Especially serious is the difficulty when no new or important dogma of modern political science is uppermost in the commentator's thought and is the real subject of his treatise on the Greeks. A reinterpretation of Plato and Aristotle to show the substantial harmony of their thought with the latest developments of science is a normal accompaniment of intellectual progress. Every solid achievement and every freak or fad of philosophy seeks support from the master minds of Hellas. If, then, Mr. Barker had invented a new type of ethical theory or a new theory of sovereignty; if he had discovered that all politics is economics, or that sociology is something which even sociologists can understand and explain; or if he held a brief for any social panacea—in any such case he would as a matter of course write a volume on the political theories of Plato and Aristotle. But so far as a casual reading reveals, he has no ulterior motive in his enterprise, and has produced his book merely from a general scholarly interest in the subject, and probably in connection with teaching it.

That under the circumstances the treatise is distinctly worth while, is the utmost tribute that the author could desire. With no pretense to originality he gives us an orderly, full and extremely lucid exposition of Greek political philosophy as centering in the greatest Greek philosophers. For the historical and archæological setting the author leans heavily upon the best of recent German commentators. For his political science he acknowledges Thomas Hill Green as his master. That Mr. Barker shows rather unusual surefootedness in this field, gives additional confirmation to the impression that Green's influence upon those who came in personal contact with him was far different from

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that exerted upon mere readers of his deep but very dull writings. It would be agreeable to think that Mr. Barker might become the bearer of Green's mantle, which rested for all too short a time upon the capable shoulders of the lamented Ritchie.

The main theme of the present volume requires of course much preliminary and collateral discussion of Socrates, the minor Socratics and the Sophists. This is very clever and lucid—more lucid perhaps than is entirely warranted by the fragmentary and confused condition of the primary authorities on these topics. Mr. Barker weaves into an attractive fabric the theories and conjectures of modern scholarship, but omits to dwell upon the gauzy character of the material out of which these theories are spun. The strenuous conflict between individualism and collectivism, for example, which he finds raging in Greece in the days of Plato and the Sophists owes much more of its vividness to German writings of the nineteenth century of our era than to what is known of the Greek literature of the fourth century B. C.

To the political thought of Plato the author devotes three chapters, to that of Aristotle, seven chapters. Noteworthy is the summary comparison of the two great philosophers:

> Aristotle wrote the *Politics*, but Plato is the great political thinker of Greece. . . . There is as little absolutely new in the *Politics* as there is in Magna Carta. Neither is meant to be new; both are meant to codify previous development. But Magna Carta remains the great document of English history; and the *Politics* remains the great document of Greek political thought—as Plato remains the great political thinker of Greece [pp. 184, 185].

This is probably not the happiest or the weightiest passage in Mr. Barker's volume.

The distinction assigned to Plato is attributable in part to the author's unqualified adoption of the view that the philosopher was in the strictest sense a practical reformer—that the *Republic* and the *Laws* were both projects seriously designed to remedy evils in the social and political condition of Hellas. Aristotle, on the other hand, is regarded by Mr. Barker as more of a speculative scientist, interested rather in the reduction of human knowledge to a system than in the reformation of institutions. Whatever of relative disparagement is involved in this view of the Stagirite is compensated by an obvious enthusiasm for the form and content of the system embodied in the *Politics*. If this high appreciation results at times in the discovery of more in the work than Aristotle put there, Mr. Barker has the consolation of erring in com-

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pany with practically every thoughtful student who has devoted serious attention to the philosopher's system.

Without attempting to dwell at length on the author's analysis of Aristotle's treatise, we may observe in passing the particular excellence of the sections on the teleology of the state—an excellence that is attained by giving to the crabbed and ill-correlated expressions in which the original thought has come down to us the grace and symmetry of modern philosophy. If Mr. Barker ever stumbles in his progress through the devious ways of modern political science, it is probably in such a statement as this: "To Aristotle . . . citizenship means direct participation in the exercise of sovereignty. It does not mean, as it means to-day, the right to share in the election of the sovereign" (p. 295). It would be pretty hard to find a respectable political science to-day in which the relation of citizen and sovereign is held to be as thus stated. Mr. Barker comes more into line with his contemporaries when he says, a little later: "To be a citizen is to be a direct part of the active sovereign; it is not merely, as it is with us, to be a part of the sovereign behind the scenes, who determines and controls the visible sovereign." But even this conception of sovereignty leaves something to be desired.

Minute analysis would doubtless reveal other passages to which a vigorous critic would take exception. Yet Mr. Barker's book as a whole is a satisfactory, truthful and interesting treatment of its subject, and should find readers wherever political science in its historical aspects receives attention. Nor should the merit of the volume be considered as sufficiently set forth without mention of its admirable mechanical qualities. It embodies high class but unpretentious bookmaking of the best English kind. With 600 pages and bound in cloth, it weighs six ounces less than a paper-covered French volume of 400 pages on an analogous subject. The psychological connection between physical heft and literary heaviness ought never to be lost sight of by authors and publishers. If Methuen and Company had omitted binding, in their catalogue with Mr. Barker's text, this volume would have been a model.

WM. A. DUNNING.

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BOOK NOTES

If Freeman's dictum were to be squared with the present ideals in historical work, we should be compelled to say that "history is past sociology and sociology present history." It is true that for the most part the "past sociology" has consisted of the addition of a little economics to the politics of the older historians, and that, when a more comprehensive survey has appeared, it has not infrequently inspired distrust among historical students by its hasty generalizations and its efforts to achieve inclusive synthesis at all costs. But when sociological historians face their task in as scholarly a spirit as that in which Professor J. Dorsey Forrest of Butler College has written the *Development of Western Civilization* (University of Chicago Press, 1907; xii, 406 pp.), there will be less criticism, at least as to method. While not lacking in generalizations which tend *à priori* to mould the story, this book reveals, in a survey extending from primitive Arabia to the trust problem in the United States, a remarkable sureness in the choice of sources and an avoidance of learned-looking but worthless references to discredited authorities, which awaken confidence in the validity of the data which the author has selected. The deductions are perhaps in many cases unconvincing, but in many other cases they are at least suggestive and may prove helpful. While by no means a complete outline of its vast subject, the book is on the whole a worthy contribution to American scholarship. It is unfortunate that the author's style falls below the dignity of his conception, the careful marshalling of his authorities and the breadth of his learning.

Professor Ludovic Beauchet of Nancy, who has published numerous books, pamphlets and articles upon French and Roman law, and who has made excursions into Greek law, has for many years devoted himself with special enthusiasm to the investigation of Scandinavian and particularly of Swedish legal institutions. In his *Études d'ancien droit suédois* he proposes to give a systematic view of Swedish private law in the middle ages. The only work which approximately covers the field, that of Nordström, was published in 1839 and is now somewhat antiquated. Texts not accessible to Nordström have since been printed, and many valuable special studies have been made by Scandinavian and German scholars. A modern *travail d' ensemble* is lacking and this Professor Beauchet promises to provide. His first volume,

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Histoire de la propriété foncière en Suède (Paris, Larose et Forcel, 1904; xx, 728 pp.), deals in its first two "titles" with the evolution of real property, from primitive community through collective family possession to individual ownership, and with the importance, extent and division of holdings. The remaining titles, which constitute nearly two-thirds of the volume, treat of the specifically legal topics of modes of acquisition, burdens upon land and rights associated with its ownership, relations between neighbors, water rights and rights in forests and mines, and the "exploitation" of the land by lease *etc.* The volume has what French publications are apt to lack, a full subject index. The author promises further volumes on family law and on legal procedure. The latter should be of especial interest, for Scandinavian procedure long preserved archaic traits.

When, in 1895, Dr. Frederick Seebohm published his volume on the *Tribal System in Wales*, he carried his detailed study of the origins of English economic institutions, so brilliantly begun in *The English Village Community*, back to those antecedents in tribal society which are disclosed in the Celtic remains, particularly the Welsh codes. English society, however, inherited its institutions and customs even more from Teutonic than from Celtic tribal life, and the Anglo-Saxon codes, so-called, reflect of course an intermediate stage of evolution between Celtic custom and the manorial life that developed after the Norman conquest. In his *Tribal Custom in Anglo-Saxon Law* (London, Longmans, Green and Company; xvi, 538 pp.), Dr. Seebohm has subjected this material to the same patient analysis that he applied to the village community and the Welsh codes. In this third work, moreover, a great deal of comparative material appears. The Brehon law, tribal custom in Scotland and Scandinavian custom are drawn upon for suggestion and illumination. Dr. Seebohm's general conclusions are so well known that it is unnecessary here to say more than this, *viz.* that he has marshalled a mass of evidence very difficult to overthrow in support of the view that tribal society in the British Isles never was in any possible meaning of the word democratic. There were always inequalities of rank and inequalities of wealth, and the normal evolution of tribal society was towards a feudal form. But, at the same time, it was usual for a kindred group to take under its protection a miscellaneous population of persons from other kindreds, to whom allotments of land were made and certain limited tribal rights granted. To this protected population the democratic rule of equality applied. In this arrangement, therefore, quite possibly may be found the beginning of those village communities in which prevailed those

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equal allotments of land which survived as the equal allotments to villein tenants on the manors of a later age.

Mr. H. Monroe Chadwick has produced another able and original study of early English history in his *Origin of the English Nation* (Cambridge University Press, 1907; 351 pp.). The value of the book lies in the healthy spirit of scepticism which pervades it, and which is the outgrowth of an unusually wide knowledge of Teutonic philology, literature and archæology. The author is thoroughly alive to the fragmentary nature of our knowledge of primitive times and to the provisional character of all opinions which may be advanced concerning them. The reader of Mr. Chadwick's pages will find the familiar terms, Angles, Saxons and Jutes, assuming new meaning under his hands. He will follow with interest an effort to trace their connections on the continent anterior to the migration. He will find the existence of a prehistoric kingship among the primitive Germans and its influence upon the migrations emphasized. Though the kings were in fact far from autocratic, slight allowance is made for a primitive condition of equality. Impressions derived from Norse and German sources are trusted more than are the representations of Greek and Roman writers.

The Defence of the Realme, by Sir Henry Knyvett, is now for the first time printed from a manuscript of 1596 (Oxford, Clarendon Press, 1907; xxxvi, 75 pp.). The purpose of the writer was to enforce upon the queen the necessity of requiring the active service of all her adult male subjects in defence of the kingdom. It was written by a man who had seen service in the field and as a deputy lord-lieutenant, and who was impressed with the danger of Spanish invasion and with the inadequacy of the national militia of the Tudors to repel it. An introduction is furnished by Mr. Charles Hughes.

Arthur W. Jose's *The Growth of the Empire* (New York, Charles Scribner's Sons, 1907; 422 pp.) is intended to serve as a handbook to the history of Greater Britain. It traces the development of the Empire from the reign of Elizabeth to the present time, and is furnished with maps and all other accessories which are necessary for use as a text-book or volume for convenient reference.

So large a proportion of the matter pertaining to the economic and political exploitation of the Congo that finds its way into print is a tale of atrocities, that any work which attempts to justify the ways of King Leopold in his African enterprise must be welcomed, if for no other reason than that the just judge should hear both sides. Mr. Henry Wellington Wack's *Story of the Congo Free State* (New York, G. P. Putnam's Sons, 1905; xv, 634 pp.) is frankly an apology for what Mr.

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Wack is pleased to call "a great colonizing undertaking founded upon modern social science," which, in the opinion of Mr. Wack and of his majesty, has already turned out to be "the greatest colonizing success in the history of the world." The story is based upon documents which Leopold and his ministers placed at Mr. Wack's disposal. Nevertheless, Mr. Wack regards himself as under no obligations whatever to the Congo officials or to his majesty's government which could interfere with an independent account of the Congo situation. It is safe to say that, after these confessions, Mr. Wack's book can never take its place as that quite impartial "true story" which its author, we judge quite sincerely, undertook to write. Its value lies wholly in its character as a clear and interesting statement of a thesis, namely, that the history of the Free State has thus far been a chapter in civilization. The thesis is not proven, but the volume is a contribution to its discussion.

When the American translation of Professor Bücher's *Industrial Evolution* appeared in 1901 it was based upon the third German edition. Since then there have appeared in Germany a fourth and a fifth edition, with the old title of *Die Entstehung der Volkswirtschaft* (Tübingen, H. Laupp, 1906; 463 pp.). Not only have many alterations and additions been made, but two new chapters have been added, respectively entitled: "Types of Metropolitan Cities in the Last Five Thousand Years" and "The Social Organization of a Mediæval Town." These successive editions of a work that is now becoming classical are the best evidence of the favor in which Professor Bücher's masterly studies are held—a favor which seems to be wholly undiminished by the criticisms of those whose pleasure it is to point out flaws in details or to attempt to cast doubt on generalizations. Here, as in so many other cases, it is the big man who can make the broad generalizations, and it is the little man, incapable of anything but narrow and special work, who erroneously thinks that science can be advanced by the denial of general laws.

The Evolution of Modern Capitalism, by John A. Hobson, appears in a new and enlarged edition (London, The Walter Scott Publishing Company, 1906; 450 pp.); and the author informs us that this edition contains additions and alterations so great as to make it in effect a new book. It may be questioned whether some of these additions are very wise. The first chapter, for example, on the origin of modern capital, is virtually an abstract of the work of Werner Sombart; and Mr. Hobson adopts without qualification Sombart's theory of the genesis of modern capitalism in land rents, seemingly ignorant of the fact that this theory has been completely exploded in the country of its origin. In its

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earlier editions the book made its mark as one of the first contributions to the study of the modern capitalistic régime; in its present edition it is open to more serious criticism. The author has not kept up with the literature of the subject in the United States; his treatment of the German movement is wofully inadequate and belated; and he persists in advancing his old social panacea—increase in the quality and quantity of consumption.

Some years ago Eduard Bernstein, in his *History of Socialism*, called attention to the remarkable work of Winstanley, the picturesque leader of the Digger movement in the early days of the English Commonwealth. One of the foremost English advocates of the single-tax idea, Mr. Lewis H. Behrens, has now published an entire volume devoted to this interesting personality: *The Digger Movement in the days of the Commonwealth, as revealed by the Writings of Gerard Winstanley, The Digger, Mystic and Rationalist, Communist and Social Reformer* (Lancaster; Simpkin, Marshall, Hamilton, Kent and Company, 1906; 259 pp.). A large part of the book is composed of extracts (with a running commentary) from the various rare pamphlets of Winstanley. We thus get a clear picture of this semi-communistic and land-nationalization episode, which has hitherto almost completely escaped the notice of English historians. The volume closes with a complete bibliography of Digger publications.

Mr. Édouard Dolléans, the well-known author of monographs on money (see below, p. 562) and on labor questions, has undertaken to write a history of socialism in a series of volumes, each devoted to an important representative. The first volume of the series, which treats of Robert Owen and was originally published in 1905, has recently appeared in a revised and enlarged edition under the title: *Individualisme et socialisme: Robert Owen, 1707–1758* (Paris, Félix Alcan, 1907; 374 pp.). An introduction of 53 pages contains an analysis of the socialist movement in general, which the author divides into sentimental, scientific and juridical or legal socialism. From any of these points of view, he thinks, Owen must be regarded as the father of modern socialism. The biography is well done, although for English readers it contains little that is not found in Podmore's recent volume. Noteworthy, however, is the bibliography of Owen's works, which covers more than twelve pages.

As the eighteenth supplementary volume of *Die Zeitschrift für die gesammte Staatswissenschaft*, Dr. Friederich Raffel has published a volume entitled: *Englische Freihändler vor Adam Smith: ein Beitrag zur Geschichte der politischen Oekonomie* (Tübingen, H. Laupp, 1905;

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193 pp.). If the plan of the work be taken for granted, there is little reason to quarrel with the way in which it is carried out; but for the purpose of making "a contribution to the history of political economy" the plan is not a very happy one. Dr. Raffel takes up in turn eight writers—Barbon, North, Vanderlint, Decker, Hume and Tucker, together with the anonymous authors of two pamphlets—and makes lengthy extracts from each writer, with comparatively little criticism and practically no attempt to bring any of them into correlation with their times. In an introduction he speaks of Malynes, Misselden and Petty, and in conclusion he compares the eight writers and says a few words about Adam Smith and Ricardo. His assumption that these eight writers exhaust the so-called free-trade literature before Adam Smith shows that his acquaintance with the subject is somewhat superficial. In fact all the writers treated by Dr. Raffel have been made more or less familiar to us by other investigators. In the chapter on Tucker no mention is made of the monograph by Dr. Clark, whose method of treatment Dr. Raffel might with advantage have taken as a model.

Dr. Michael Tugan-Baranowsky, whose scholarly works on the history of crises in England and on the history of the Russian factory system are well known to all students of these subjects, is perhaps the leading "revisionist" in the socialistic movement; and the book which he has published under the title, *Theoretische Grundlagen des Marxismus* (Leipzig, Duncker and Humblot, 1905; 239 pp.), is likely to prove a veritable bomb in the camp of the scientific Socialists. One after another all the claims of orthodox Marxism are discarded. A large part of the volume is devoted to the economic interpretation of history. In so far as Marx's "materialistic version of history" implies that the existence of class struggle is the sole explanation of progress, Tugan-Baranowsky characterizes it as the greatest of mistakes. He recognizes, however, that Marx's second doctrine, that of class struggle, is not in any way a logical conclusion from the first, that material economic factors are the determining elements in history. In other words, he confesses that the Marxian version of the economic interpretation of history is neither inevitable nor defensible. He then takes up in turn the labor theory of value, the doctrine of surplus value, the impoverishment theory and the doctrine of the cataclysm of society, and he shows that none of these is longer tenable in the face of the criticisms urged by the economists. What then, we may ask, is left of scientific socialism? Tugan-Baranowsky declares, at the close of the book, that he is still a socialist, because he finds a fundamental contradiction between

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the basic principle of capitalism and the ethical norm which declares that every man must be an end to himself. With this defense of socialism, however, we are obviously getting back to the sentimental socialism of pre-Marxian days.

Mr. Gaston d'Isambert's *Les Ideés socialistes en France* (Paris, Felix Alcan, 1905; 426 pp.) is a sympathetic review of French socialism before 1850. In the author's opinion the socialism of the early French school is immensely superior, from both the philosophical and the ethical point of view, to that of the German school. Indeed, what is best in German socialism can be traced, he thinks, to the great French socialists. In spite of his friendly feeling toward the socialistic writers, the author is unsparing in his criticism of their plans for social reorganization. The book closes with a valuable bibliography of works bearing on socialism in France. It is somewhat surprising that the author should not have known of the existence of Professor Ely's *French and German Socialism*, which in many important particulars is strikingly similar to Mr. d'Isambert's work.

In the valuable series of studies published by the School of Political and Social Science of Louvain there has recently appeared a work by Dr. P. Michotte on the history of economic doctrine in the nineteenth century in Belgium: *Etudes sur les théories économiques qui dominèrent en Belgique de 1830 à 1886* (Louvain, Peeters, 1904; 472 pp.). The plan of Dr. Michotte's book is novel. The first half is devoted to a study of the more important economic movements, especially as regards foreign trade, public finance and labor. The author seeks to ascertain the fundamental ideas underlying each of these movements and pays considerable attention to the various congresses in which they were discussed and furthered. In the second part he takes up the most important writers: Molinari, le Hardy de Beaulieu and de Bruckère, representing the classical or liberal school; Huet and de Laveleye, representing the historical school; Ducpétiaux, de Coux and Perrin, representing the Catholic school; and finally the statistician Quételet, who occupies a chapter by himself. Dr. Michotte has a keen critical faculty, as is evident from his discussion of de Laveleye, whom he accuses of oversentimentalism, and of Quételet, in whom he finds great qualities but who, in his judgment, was guilty of fundamental mistakes regarding the conception of moral statistics and the significance of the constancy of economic law. Dr. Michotte, on the whole, belongs to the school of social Catholics, and it is from that point of view that his criticisms are to be interpreted. He pays almost no attention to what might be called the technical questions of economic theory, such as the

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problems of production, of capital, of distribution *etc.*, but limits himself almost entirely to problems of what might be called social politics. As a contribution to this phase of the history of economics, his book is not only interesting but valuable.

The *Pattern Nation* (London, Macmillan and Company, 1906; 172 pp.) is the title which Sir Henry Wrixon has chosen for a somewhat discursive essay on the present drift towards socialism and its probable consequences. In socialism he sees the rock on which the democratic ship of state is destined to go to pieces. More in sorrow than in anger, he analyses the causes which are impelling the states of the western world towards socialism and discusses what appears to him to be the irreconcilable conflict between the ideals of socialism and the ideals of liberty. The most interesting thing about his criticism of the socialist state is his apparent acceptance of the view that its coming is inevitable. He arraigns it as a thing achieved or about to be achieved, and his only hope for the future of his country appears to be based on the belief that the passing of socialism, when once its true nature is understood, will be even more rapid than its coming. The essay is valuable as a reflection of a phase of opinion in England, if not very convincing as an argument.

La Coopération by Mr. P. Hubert-Valleroux (Paris, Victor Lecoffre, 1904; 228 pp.) is a compact manual of information in regard to the coöperative movement, particularly in France. Following a brief historical introduction come chapters on the present situation of coöperative societies in the fields respectively of production, of trade, of consumption and of agriculture. The author concludes by insisting on the importance of the moral and religious motives in connection even with a movement like coöperation, which might be thought to be purely industrial.

In his *Factory Legislation in Pennsylvania: Its History and Administration* (Philadelphia, John C. Winston Company, 1907; xi, 178 pp.), Dr. J. Lynn Barnard presents an admirable sketch of the triumphant struggle for restrictive labor laws in one of the most conservative of our states. His account is doubly valuable because it is not confined to the analysis of laws and judicial decisions, but includes a description of the conflicting motives and opposing personalities behind each change in the law and a discussion of the circumstances which prevent efficient administration even after good laws have been enacted and upheld by the courts. This monograph is the third special study of this field of legislation for a particular American state that has thus far been published. It is much to be desired that similar studies for other

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states than Pennsylvania, New York and Massachusetts may be undertaken by students of social legislation, and for such studies Dr. Barnard's work may well serve as a model.

Dr. Moritz Wagner has rendered a distinct service to foreign as well as to German students by preparing a brief history of the development of Germany's system of workmen's insurance: *Die deutsche Arbeiterversicherung: Ihre Entstehung und Weiterentwickelung* (Berlin-Grunewald, A. Troschel, 1906; vi, 314 pp.). After twenty-five years of successful operation the system can no longer be looked upon as an experiment. What is now needed is a codification of the legislation which has brought it to its present stage of development and its extension to classes of the industrial population (*e. g.* widows and orphans) which it has thus far only indirectly benefited. Whether the system which has on the whole proved so satisfactory for Germany is adapted to the conditions in other countries, and especially in the United Kingdom and the United States, is a question which must be decided in part by a consideration of these conditions and in part by a thoughtful study of the lessons of Germany's experience. The materials for such a study are ably presented in Dr. Wagner's monograph.

Une Experience industrielle de réduction de la journée de travail (Brussels, Misch and Thron, 1906; xx, 120 pp.) is the title of an exceedingly interesting and exact study of the results of shortening the hours of labor in a Belgian chemical works under the direction of the author, Mr. L. G. Fromont. When the experiment was begun, in 1892, the usual work-day was twelve hours. This was reduced to eight hours by introducing the three-shift system, and the result after twelve years' trial appears to have been satisfactory from every point of view. The author is careful to warn the reader against hasty generalizations based on this one experiment; but it is evident from the full and precise description given of the conditions in the establishment that it is typical of a large class, and that a like success may reasonably be expected over a considerable field of industrial enterprise. The verbal description of the text is supplemented by statistical tables and charts and even by reproductions of photographs showing the tasks in which different workers are engaged. As a whole the monograph is to be commended as a model of exposition and of temperate reasoning.

The French Association for Protective Labor Laws has published, under the title, *La Durée légale du travail* (Paris, Felix Alcan, 1905; 297 pp.), an interesting account of the proceedings which resulted in its advocacy of a ten-hour legal work-day for all classes of workers in manufacturing and mechanical industries. In addition to voluminous re-

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ports from Messrs. Fagnot, Millerand and Strohl, the volume contains notes on the discussions called forth by these reports and on the propositions submitted to vote, a record of the votes taken and, in appendices, the text of the labor laws now in force which it is proposed to amend. To an American student it is especially interesting to note how similar are the difficulties, legal and administrative, which oppose the progress of protective labor legislation in France, to those with which we have to contend in the United States. Most of the arguments for and against the proposed extension of the labor laws which are made prominent in the report apply with but slight modification to similar proposals in this country.

In his address on the maximum working day, *Der Maximalarbeitstag* (Tübingen, H. Laupp, 1907; 51 pp.), delivered before the Evangelical Social Congress at its last session in Jena, Professor Bernard Harms presents an interesting review of the present situation in Germany and the need for further legal interference to shorten the work-day. His conclusions are, briefly, that the hours of young persons should be limited to nine a day; that the ten-hour day should be made to apply generally to women working in factories; that the half-time system should be introduced for the benefit of women with children to care for at home; and that every encouragement should be given to the extension of international agreements in regard to labor regulations.

Students of this side of the labor problem will find in Mr. Noseda's *Lavoro delle donne e dei fanciulli* (Milan, Ulrico Hoepli, 1903; 172 pp.) a valuable summary of foreign legislation regulating the employment of women and children in the principal European countries. Especially useful are the tables giving the essential data for each country in a form suitable for comparative study. The work appears to be done with great care.

A valuable addition to the literature in regard to statistics of wages is the elaborate study of the wages of coal miners in France, *Le Salaire des ouvriers des mines de charbon en France* (Paris, Édouard Cornély and Company, 1907; 520 pp.), by Mr. François Simiand. After reviewing the available statistical material and presenting the facts disclosed by means of tables and charts, the author proceeds to a discussion of the causes of the wage changes studied. He considers the adequacy of the explanations suggested by current theories of wages and supplements these by explanations of his own. The conclusions finally reached are largely negative, but they at least serve to indicate further lines of fruitful investigation which should be pursued as a means of attaining that complete harmony between theories established de-

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ductively and the actual facts disclosed by statistics, which is the goal of economic science.

The confident assertion, still sometimes advanced, that the dependence of American trusts and German cartells on the protective tariffs of those countries is proved by the absence of trusts from free-trade England, is conclusively refuted by Mr. Henry W. Macrosty's *The Trust Movement in British Industry* (London, Longmans, Green and Company, 1907; xvi, 398 pp.). In this volume the author shows not only that the combination movement has made substantial progress in Great Britain, but that it presents similarities to the movement in protectionist countries at so many points as to necessitate the conclusion that there are behind it world causes more fundamental than tariff vagaries. The book is divided into an introductory chapter, twelve chapters describing combinations in different industries and a chapter presenting a "Survey and Conclusions." In the introduction a convenient classification of combinations is suggested, which forms the skeleton for the descriptive chapters which follow. The latter are almost entirely historical and descriptive and give every evidence of exhaustive research and accurate scholarship. It was perhaps inevitable that the conclusions based on such an intimate study of the actual facts of the industrial situation should be less confident and sweeping than those presented in the author's earlier work on *Trusts and the State*. The principal point which he here emphasizes is that the combination movement has behind it sound economic reasons, which public policy should respect. Anti-trust legislation he considers as worse than useless. He also recognizes the difficulty of penalizing those forms of competition which are socially detrimental without at the same time condemning forms which are innocent if not salutary. For these reasons he is disposed to recommend a policy of alert inaction as that best calculated to promote the public good; and he concludes: "Patience, not hostility, is our proper attitude. What is clear is that we need more study, more investigation, and, above all, more discrimination."

A helpful companion volume to Macgregor's *Industrial Combination*, reviewed in the last number of this QUARTERLY, is the work of Dr. Ferdinand Baumgartner and Dr. Arthur Meslény on *Kartelle und Trusts: Ihre Stellung im Wirtschafts- und Rechtssystem der wichtigsten Kulturstaaten* (Berlin, Otto Liebmann, 1906; vi, 367 pp.). Beginning with an analysis of cartells and trusts in general, the book deals in successive chapters with their different kinds, the progress of the movement to organize them, their effects, their legal status, and

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with proposals for the solution of the problems to which they give rise. The work thus presents the concrete details in regard to industrial combinations which are so conspicuously absent from Mr. Macgregor's more analytical study. Considering the mass of condensed information which the German work contains, it appears to be singularly free from errors. It will be found useful for consultation.

One of the best volumes in Professor Ripley's series of economic source-books is the last, on *Railway Problems* (Boston, Ginn and Company, 1907; xxxii, 686 pp.), which appears under his own editorship. In general arrangement it is similar to the earlier volumes, but it has the merit of dealing in a more adequate way with all phases of the topic considered. Following an admirable introduction by the editor, there are four chapters treating of important general aspects of the subject. Then come some thirteen chapters presenting in abridged form the more important decisions of the Interstate Commerce Commission, accompanied by articles by the editor on "The Trunk Line Rate System" and "Economic Waste in Transportation." The book concludes with seven chapters treating of such recent developments in the railway world as the Northern Securities Company and the latest amendment (1906) to the Interstate Commerce Act, and of the experience of England, France and Germany with their respective systems of railway regulation. As the editor points out in his preface, one of the great advantages of the material presented in this volume for pedagogical purposes is that it deals so largely with debatable questions. With its aid there should be no difficulty in making college courses on railway problems interesting as well as profitable.

The Working of the Railroads, by Logan G. McPherson, lecturer on transportation at Johns Hopkins University (New York, Henry Holt and Company, 1907; 269 pp.), is an excellent presentation in brief form of the every-day operation of a railroad. All phases of the industry are considered—construction, operation, traffic, accounting and financial and executive administration. This little volume provides material for instruction in railroad economics, much needed, but difficult of attainment by most teachers. It is to be hoped that the success of this modest attempt will lead the author to expand his work and to prepare a complete descriptive treatise on the practical and technical side of modern railroading, a task for which his experience amply equips him.

Mr. Edwin A. Pratt, who has written much in past years on the subject of agriculture and of railways, has often subscribed to the popular opinion that the age of canals in England is gone. He has now worked

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up this thesis into a volume entitled *British Canals: Is Their Resuscitation Practicable?* (London, John Murray, 1906; 155 pp.). He points out the absurdity of the allegation that the chief canals of Great Britain have been "captured" and "strangled" by the railways, and concludes that the peculiar geographical situation of Great Britain renders a revival of canals impossible. A separate chapter is devoted to European continental conditions, which are shown to be entirely different from those existing in England. A short chapter is added on American conditions, in which are presented anew the familiar facts as to transportation on the Erie Canal and the Mississippi River.

The first volume of "The Farm Library," published by Doubleday, Page and Company, is *Cotton, Its Cultivation, Marketing, Manufacture, and the Problems of the Cotton World*, by Charles William Burkett and Clarence Hamilton Poe (New York, 1906; 331 pp.). Mr. Burkett is professor of agriculture in the North Carolina College of Agriculture and Mechanic Arts; and the conjecture may be hazarded that to him are to be credited the more solid and valuable parts of the work, while the more colloquial, popular and often semi-poetic passages are to be ascribed to his collaborator. Although the style is of the cheap-magazine variety, the book contains so much exact and interesting information on every phase of the cultivation and marketing of cotton that it will be found useful by the special student. The chapters on cotton manufacture are less full and satisfactory.

Professor Walter Henry Hull of the University of Chicago has collected about sixty separate addresses on the money question, delivered in recent years by prominent bankers, financiers and economists, under the title *Practical Problems in Banking and Currency* (New York, The Macmillan Company, 1907; 596 pp.). The addresses are, as might be expected, of a rather miscellaneous character, ranging from good to indifferent. Some authors are represented by more than one address, and the same subject is occasionally treated by a number of different writers. Most of the contributors are practical bankers, with a smaller number of government officials and a sprinkling of scientists. The book is divided into three sections, devoted respectively to general banking, banking reform and currency, and trust companies. Some of the papers in the second section, as for instance that by the president of the Waukesha National Bank of Wisconsin, are interesting as showing why the outlook for an asset currency in the United States is still so problematical.

Mr. Byron W. Holt, the editor of *Moody's Magazine*, has compiled and edited, under the title of *The Gold Supply and Prosperity* (New

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York, The Moody Corporation, 1907; 261 pp.), a number of essays on the economic effects of the increasing supply of gold. Among the writers are economists like Professors Fisher, Kemmerer, Clark and Johnson, and representatives of banking and financial interests in New York. The first part of the book is composed of the symposium on the quantity theory of money which appeared in *Moody's Magazine* in 1906, and it is notable that all the writers are agreed in accepting the adequacy of the quantity theory in its refined form. In fact, as Professor Fisher says, although both true and false theories go by that name, it is hard to dissent from the conclusion that "prices in gold countries depend chiefly on the amount of business and the amount of gold." The subject proper is taken up in the fourth part of the book in a way that is both popular and scientific. It is interesting to notice how Mr. Goodbody of the New York Stock Exchange reinforces the conclusions of the economists by pointing out that the fall in the value of gold means a relatively higher value of time money as compared with call money. A rather elaborate conclusion by the editor points out that the instability of money, resulting in a higher price level, may be just as deleterious as the appreciation of gold, which means a low price level.

Mr. A. de Foville, the well-known French economist and former director of the French mint, has written for the Bibliothèque d'Économie Sociale a volume entitled *La Monnaie* (Paris, J. Gabalda and Company, 1907; 242 pp.). The book is divided into three parts: (1) theory of legislation, (2) monetary technique and (3) the economic life of money. Like everything that has come from the pen of Mr. de Foville the book is clear and interesting; but it suffers severely from a lack of grasp of the fundamentals of the theory. This is especially apparent in the third part, in the discussion of the relation between credit and prices and in the treatment of variations in the purchasing power of money, where it is well-nigh impossible to get any clear-cut explanation of the reasons of the changes. The best part of the book is that on monetary technique, where some fresh and interesting material is introduced.

Mr. Jean Favre deals with some of the newest phases of the money situation in a work entitled *Les Changes dépréciés: Études théoriques et pratiques* (Paris, Chevalier et Rivière, 1906; 144 pp.) The volume, to which Professor Raphael Georges Lévy furnishes an introduction, takes up, first, the general theory of a depreciated standard, whether that standard consists of silver or of irredeemable paper money. It then discusses the situation in the Argentine Republic and in Spain, coun-

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tries with a depreciated paper currency, and the conditions in Mexico, China and the French Asiatic colonies. Here Mr. Favre deals, under the name of the stabilization of silver, with what we have become accustomed in recent years to call the gold-exchange standard. He praises the action of the Mexican authorities, which he correctly puts on a level with the Indian reform; but he has nothing to say about the changes in the Philippines, in Panama or in the Straits Settlements. In his discussion of the Chinese situation he thinks it fortunate that the recommendations of the American commission were not adopted. While he has no doubt that the gold standard will ultimately be accepted, he maintains that much more study of the facts is necessary before it will be even moderately safe for China to adopt the gold-exchange standard. The final chapter on the currency situation in the United States is superficial.

Two earlier French monographs discuss the validity of the quantity theory of money, and its applications to the international exchange of goods and to the world distribution of the precious metals. In *La Monnaie et les prix* (Paris, J. B. Sirey, 1905; 132 pp.), Mr. Édouard Dolléans first explains and criticizes index-number tables and then seeks to discover the causes of the variations in prices—a quest which leads to an attempt to verify, experimentally, the quantity theory of money. This attempt yields the familiar conclusion that lack of facts as to the volume of business, the stock of money, the part played by money substitutes and the rapidity of money circulation makes impossible any precise quantitative formulation of the theory. In *Les Changes étrangers et les prix* (Paris, Guillaumin and Company, 1905; 171 pp.), Mr. Jacques Pallain endeavors to show that price variations find their counterparts in variations of the rates of foreign exchange. In support of this thesis he ably defends and applies the quantity theory of money. American readers, mindful of an ardent controversy, will be especially interested in Mr. Pallain's treatment of the arguments advanced by Professors Laughlin and Whitaker.

Mr. Howard K. Brooks, who has already written much on the subject of foreign exchange, has published a new work entitled *Brooks' Foreign Exchange Text Book, An Elementary Treatise on Foreign Exchange and the Monetary Systems of the World* (Chicago, H. K. Brooks, 1906; 239 pp.). The book is designed not only for the practical banker, the merchant and the tourist, but also particularly for the student. It contains detailed chapters on the monetary systems of the world, on the conversion of foreign money into United States money, on quotations of foreign exchange, on pars of exchange and on

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arbitrage, together with much technical information with reference to foreign commercial forms and the methods of buying bills of exchange on foreign countries. There is no other book in which all these facts can so conveniently be found; and the work may therefore be welcomed as a satisfactory supplement to that of Mr. Margraff, which was reviewed in an earlier number of this QUARTERLY.

A tardy word of recognition is to be given to Mr. A. S. Bolles's excellent book on *Money and Banking* (New York, American Book Company, 1903; 336 pp.) With the exception of the first chapter, which contains a very good review of the nature and the uses of money, the entire volume is a clear and practical exposition of banks and banking. The powers, privileges and duties of shareholders, depositors, bank officers and bank employees are carefully detailed with most commendable directness and brevity. While much attention is given to national banks, there is a well-balanced treatment of state and private banks, savings banks and trust companies. The part played by banks in modern finance is well told. The entire last chapter is devoted to a description of bank methods in negotiating loans for railway companies. Bank officers and employees are usually disappointed when they read books on money and banking. The theoretical and historical matter, constituting the whole of many such books, they find only "interesting." This book by Mr. Bolles they will pronounce distinctly useful as well as interesting. And perhaps it is exactly this practical character of the work which should especially commend it to scholars and to teachers of economics and finance.

Professor C. Colson, who has for many years held the chair of economics at the École des Ponts et Chaussées, undertook several years ago the publication of his lectures. The work, still unfinished, has attracted attention as on the whole the best of existing French treatises on economics, and the only one which utilizes mathematical methods. The third volume of his *Cours d'économie politique* is devoted to public finance (Paris, Guillaumin and Company, 1905; 443 pp.) and is characterized by the same clearness, conciseness and good sense which were so marked in the earlier volumes. As with most of the French writers, the budget, the debt and the administrative side of finance occupy the major part of the volume; but Mr. Colson shows that he has good command also of the more general theories which govern the problems of taxation. The fourth and concluding volume is expected soon to appear.

A more elementary treatise on finance is found in the work of Professor Edgard Allix, of the University of Caen, under the title of *Traité*

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élémentaire de la science des finances et de la législation financière française (Paris, Arthur Rousseau, 1907; 622 pp.). Mr. Allix's work is designed as a text-book only, and he very modestly disclaims any pretension to originality; but his treatise is nevertheless a valuable one, for American readers also, in that it pays much attention to the more technical topics and to an analysis of the budgetary documents themselves. To those who desire to have a clear picture of the existing situation in France as regards fiscal matters, the book of Mr. Allix will be welcome.

Professor Nicholson's little volume on *Rates and Taxes as affecting Agriculture* (London, Swan Sonnenschein and Company; New York, Charles Scribner's Sons, 1905; vi, 146 pp.), is one of a number of important works that have recently been called forth by the urgent need of reform in English methods of local taxation. Professor Nicholson treats the subject with especial reference to agriculture, but his main object is to arrive at principles of general applicability to local taxation. Despite the laying down of certain *dicta* that are perhaps open to question (*e. g.* that the principle of betterment might be applied to children in distributing the burden of school taxes, just as much as to lands and houses), he writes with convincing directness and freedom from *doctrinaire* tendencies. He establishes the conclusions that during the last half-century burdens on the agricultural interest have disproportionately increased; that these burdens have virtually been the proverbial last straw in the depressing of agriculture; and that adequate remedies involve a complete reorganization of the whole system of local finance.

J. C. Graham's *Taxation (Local and Imperial) and Local Government* has appeared in a fourth edition, revised by M. D. Warmington (London, P. S. King and Son, 1905; 138 pp.) The purpose of the argument is to change the basis of English local rates from real property to general property. The accuracy of the author's information as regards the United States may be estimated from the statement that "In America taxation is based on capital value and not on income, and where such property is taxed no difficulty appears to have been met in assessing the tax" (p. 37). The authority for this remarkable passage is the 1852 Report on the Income Tax, which, as students will remember, was based, so far as American conditions are concerned, chiefly on the testimony of a gentleman from Texas.

Agreeable anticipations are naturally aroused by the title of a work by Dr. Eugen Lauterbach: *Die Staats- und Kommunal-Besteuerung in Deutschland, England, den Vereinigten Staaten von Nordamerika*

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und den englischen Kolonien (Berlin, Franz Vahlen, 1907; 241 pp.). A good comparative study of general and local taxation among the chief Teutonic peoples would indeed be interesting and valuable. Unfortunately Dr. Lauterbach, who is a doctor of law, not of philosophy, in treating of the extra-German countries has confined himself almost exclusively to American legal treatises and to a few of the official documents in the English colonies. The book therefore gives a very one-sided view of the situation in the United States, limiting itself to a statement of a part of the facts (among which unfortunately a great many errors have crept in) and neglecting most of the problems which are of actual interest. Much the same may be said of the portion of the work which deals with Australasia. As there is nothing new in the book so far as Germany and England are concerned, it is hard to see to whom it will be of value. The fourth part, on local taxation, is absurdly inadequate.

Mr. Joseph Rowntree and Mr. Arthur Sherwell, who have become well-known during the past decade as joint authors of a number of books on the evils of the liquor traffic, have undertaken the preparation of a comprehensive study of its fiscal aspects. The first volume of this work, *The Taxation of the Liquor Trade* (London, Macmillan and Company, 1906; 537 pp.), is devoted to a survey of the tax on sales of liquors by those dealers whom the English call publicans, or by those who, like the proprietors of hotels, restaurants, theatres, railways, bars and clubs, take out a modified form of the publican's license. The second volume is to deal with the other liquor license duties; the third volume, with the beer and spirits duties. The joint authors are to be congratulated in having made a study that is not only scholarly but interesting. We find a full statement of the genesis and development of the taxation of the liquor trade and a detailed account of the existing systems. To American students the work will be of especial value, since no less than 150 pages are devoted to a description of the methods adopted in the United States, including a minute study of typical states like Connecticut, Vermont, New Hampshire, Pennsylvania, Massachusetts and New York. This part of the work is the result of a three-years' investigation. Another chapter is devoted to a survey of the liquor-tax system in all the important British colonies. The authors find that the liquor trade is undertaxed in Great Britain, and that in the United States the tax rates as well as the revenue are from five to fifteen times higher. They believe that the present method of taxation in Great Britain should ultimately be replaced by a system of public tender, or sale of licenses to the highest bidders. The book

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is a mine of information on almost every phase of the subject and constitutes a notable addition to the scanty literature dealing with this side of taxation. It is to be hoped that the succeeding volumes will soon appear.

When, at the close of the nineteenth century, department stores began to develop in Germany, an attempt was made to check their growth and to protect the interests of the small shops by special taxation. A system of this sort was adopted by Bavaria in 1899, and during the next five years it spread to other German states. It was a part of the famous German "middle-class policy." The actual results of the system in Prussia have been investigated by Dr. Hans Gehrig, in a pamphlet entitled *Die Waarenhaussteuer in Preussen: ein Beitrag zur Mittelstandspolitik* (Leipzig und Berlin, B. G. Teubner, 1905; 81 pp.). The author takes the position that the system has been a complete failure; that it has resulted in building up the large department stores at the expense of the smaller department stores; and that the tax has been shifted either back upon the wholesale merchants or forward upon the consumer. Dr. Gehrig concludes that the whole episode in Prussia is another instance of the futility of seeking to check by government measures, and specially by any system of taxation, a natural economic evolution.

One of the recent numbers of the publications of the American Economic Association is *The Taxation of the Gross Receipts of Railways*, by Guy Edward Snider (1906; 138 pp.). The monograph covers a wider field than is indicated by its title: it is virtually a comparison between the *ad valorem* and gross-receipts systems of taxation in the American states, as illustrated especially by Missouri and Wisconsin. A serious and thorough study of the problem leads the author to the conclusions that the change made by Wisconsin in substituting the *ad valorem* for the gross-receipts tax is a step backward, and that the so-called Adams-Cooley plan of valuation of railways in Michigan is open to serious criticism. In these conclusions the tax commissions of Ontario and of California, in their latest reports, substantially concur.

The movement for the taxation of land values in Germany has taken practical form in the tax on the unearned increment, the so-called *Wertzuwachssteuer*. The leader in the movement is K. Damaschke of Berlin, who has been publishing since 1905 a quarterly review known as the *Jahrbuch der Bodenreform*. There has been, as was to be expected, quite a flood of pamphlet literature on both sides. The chief of the critical studies is the work of Adolf Weber, *Noten über Bodenrente und Bodenspekulation in der modernen Stadt* (Leipzig,

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Duncker und Humblot, 1904; 211 pp.), which gives a short account of the forerunners of Henry George. Weber takes an attitude of opposition to the scheme and concludes that the aims of the land reformers can be attained more successfully by the inheritance tax than by a tax on the unearned increment. The best of the monographs in favor of the system are *Die Wertzuwachssteuer*, by Robert Brunhuber (Jena, Fischer, 1906; 88 pp.) and *Der Wertzuwachs an Grundstücken und seine Besteuerung in Preussen*, by Johann Victor Brädt (Berlin, Bruer and Company, 1907; 76 pp.). We find in these monographs a detailed statement of the system as it has developed, especially in Frankfort and Cologne, but also in other Prussian cities. It must be remembered, however, that in Prussia there is, as a rule, no local property tax and that the tax on the rentals of real estate is confined within narrow limits. Many of the reasons which make for the adoption of this additional tax on unearned increment in the Prussian cities are thus absent in the United States.

Mr. Henry Gannett, geographer of the tenth, eleventh and twelfth censuses, has published a small *Statistical Abstract of the World* (New York, John Wiley and Sons, 1907; 84 pp.) The book consists of tables giving comparative statistics of population, finance, production and foreign commerce. Unfortunately, however, the dates are in no case given, and the preface cautions the reader that the dates of the same table frequently differ. Furthermore, no reference at all is given to any of the sources. The author's excuse is that to recapitulate them would be a useless extension of the work. This decision is much to be regretted, as it robs the little book of practically all usefulness to students. For a really adequate presentation of the figures we shall be compelled to wait for the completion of the work which has been begun by Mr. Austin, chief of the bureau of statistics in the federal department of commerce and labor.

Professor John Pease Norton's *Statistical Studies in the New York Money Market* (1902; 108 pp.), published by The Macmillan Company for the department of social sciences in Yale University, was one of the most creditable essays in the application of exact statistical analysis to an economic problem that we have yet had from an American source. It introduced a number of refinements of statistical method, particularly the distinction between the growth element and periodic elements and between both of these and dynamic elements, and the substitution for the base line hitherto employed of a growth axis as a line from which to make measurements of lesser change. Among the results, as will be remembered, was the demonstration that

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the more important correlations obtained were equal in degree to the highest correlation which has been obtained by Pearson in biological studies, and which is held to show that biology is almost as exact as any branch of physical science. From these determinations Dr. Norton was led to assert that the phenomena of economics lend themselves far more readily to the possibility of prediction than do the phenomena of meteorology. Recently Professor Norton, like his colleagues Professor Fisher and Professor Chittenden of Yale, has become deeply interested in the economic aspect of public health, and his paper read at the last annual meeting of the American Association for the Advancement of Science, which has been reprinted in pamphlet form, is an extremely interesting and significant discussion. It is fair to look for important practical results from these Yale studies in exact economics.

The development of new statistical methods and the increased use of statistics in all branches of psychological investigation render timely and helpful the work of Prof. Edward L. Thorndike, *An Introduction to the Theory of Mental and Social Measurements* (New York, The Science Press, 1904; 210 pp.). The conception of variability, theory of probability, use of frequency curves, the correct use of averages, selection of units *etc.*, are clearly explained and fully illustrated. Dr. Thorndike's warnings against the more frequent misuses of average and other statistical quantities are so pointed and so well set off by their context that no one can make use of the book without learning at least what *not* to do. While the illustrations and examples are drawn in the main from the psychological sphere, enough are taken from social statistics and the applications to the sociologist's use are sufficiently indicated to make the book of practical value to teachers as well as students of social statistics. Like W. H. Allen's recent volume of essays, *Efficient Democracy*, Dr. Thorndike's book is at bottom intended to show that the "theory of mental (and social) measurements is no display of mathematical pedantry or subtle juggling with figures, but on the contrary is simple common sense" (p. 165).

This is not the place to review *The Nutrition of Man*, by Professor Russell H. Chittenden (New York, Frederick A. Stokes Company, 1907; xi, 321 pp.), as a contribution to physiological theory or to hygiene, further than to say that it has been received in scientific circles as a work of first-rate importance. It is, however, interesting also to the economist, because for the first time it bridges in part the gap between human energy and social wealth. We find here detailed tables summarizing the results of a large number of experimental tests, analyses and measurements showing the proteid and energy needs of

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the average human being at rest and at work, and the equivalents in terms of various food products and daily rations. These tables indicate clearly that it is quite within the limit of scientific possibility to determine the total energy of a population, per thousand or per million individuals; to determine the economic application of a certain definite and necessary portion of such energy to the work of obtaining suitable food for its own replenishment; to calculate the amount of energy available for other satisfactions beyond the food supply; and to calculate the average waste. That such determinations will be made within no distant time may confidently be predicted; and we shall then have a new basis for economic theory that will undoubtedly make necessary many interesting corrections and expansions of present teachings.

In Boston, in 1895, over 54,000 persons, constituting more than ten per cent of the entire population, lived in boarding and lodging houses; and the number is doubtless now much increased. Dr. A. B. Wolfe's *The Lodging House Problem in Boston* (Boston, Houghton Mifflin and Company, 1906; 192 pp.), is a study of the causes, conditions and needs of this great group. The history of the South End lodging-house district, with which the book mainly deals, shows within a generation an almost complete transformation of a residential into a lodging-house section. Still more significant is the diminishing percentage of boarding-houses and the relatively increasing percentage of houses tenanted by lodgers who enjoy the greater freedom of taking their meals where they please. The correlations of this change with civic and economic development are well brought out. Dr. Wolfe seems to show that the letting of lodgings can, as a rule, be but moderately profitable to the "landladies" and that the struggle for existence among them is a keen one. The fact that real-estate values in the district are declining furnishes one important element of pressure. Another is a form of "fake installment" business, through which, in an apparently large proportion of cases, unscrupulous real-estate dealers swindle landladies. This pressure, as transmitted to lodgers, shows itself in meaner accomodations, especially in the absence of a public parlor wherein tenants may receive callers; and this situation, which exists in a large majority of the houses studied, plays a peculiarly significant part in the serious problem facing young women in the lodging-house. The fact that the lodging-house population is far from reproducing itself by natural growth supplies another leaf to the book of "race suicide." While somewhat academic, Dr. Wolfe's discussion of immediate and ultimate means for the betterment of lodging-house

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conditions is written broadly and judicially. A similar study in the metropolitan center of New York, though the difficulties of making it there would be far greater than in Boston, would be of correspondingly greater value.

Among the multiplying volumes on the various ethnic elements that have entered into our American population, *The Italian in America* (New York, B. F. Buck and Company, 1905; ix, 268 pp.), prepared by Eliot Lord, special agent of the tenth census in social statistics, John J. D. Trenor, formerly chairman of the immigration committee of the national board of trade, and Dr. Samuel J. Barrows, secretary of the prison association of New York, while rather general and popular in character, is a useful work. There is possibly more prejudice against the Italian than there is against any other nationality among our foreign-born, and a great deal of it is based upon ignorance of the economic, intellectual and other valuable qualities of our Italian citizens. This temperate and readable volume will clear away much misunderstanding.

For the college student and for a majority of general readers the *Textbook of Sociology*, prepared by Professor James Q. Dealey from the materials offered in the writings of Professor Lester F. Ward (New York, The Macmillan Company, 1905; xxv, 326 pp.), is more serviceable than the original documents. Professor Ward's originality and suggestiveness render his writings indispensable to the student who desires to enter thoroughly into current sociological thinking; but for this reason and for other reasons they are difficult for the beginner. The *Textbook* selects the essential propositions of Professor Ward's system, arranges them systematically and presents them with simplicity and clearness.

Somewhat disappointing because of its limitations and a certain lack of scientific depth, deficiencies explainable by its origin in a course of lectures, *La Methode historique appliquée aux sciences sociales*, by Ch. Seignobos (Paris, Félix Alcan), is nevertheless a useful work to put into the hands of students either of the social sciences or of history. It is best in those chapters which deal with the conceptions and methods of historical criticism, especially as applied to documentary data. It is less commendable in those later chapters in which the author sets forth his views upon the scientific grouping of social-historical facts. Here he is not sufficiently grounded in demography or in social psychology to be able to contribute anything particularly new or important to our knowledge. Practically he does not at any time in his survey of the social sciences get far away from political economy and economic history; and his criticism of the use of mathe-

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matical methods in these branches shows lack of familiarity with what has already been accomplished.

On the occasion of the seventieth birthday of Professor Neumann of Tübingen, a number of his former students have followed the good German custom of issuing a volume of contributions, under the title, *Festgaben für Friedrich Julius Neumann zur siebenzigsten Wiederkehr seines Geburtstages* (Tübingen, H. Laupp; 308 pp.). Comparatively few of the essays are by writers of international reputation. Among the more interesting contributions may be mentioned: "Birth Rates and International Migrations in Baden," by Zwiedeneck-Südenhorst of Karlsruhe; "The Logical Conceptions of Social Science," by Dr. O. Spann of Vienna; "The Social Importance of Agricultural Credit in Russia," by E. von Bergmann of Riga; "The Side Effects of the English Trade Unions," by Dr. F. Schomerus; "The Most Favored Nation Clause," by Dr. Julius Wolff of Breslau; and "The Rescue of the Middle Class," by Dr. F. C. Huber of Stuttgart.

During the past three years the University of Manchester has added to its publications on various scientific topics both an historical and an economic series. The historical series includes the following: No. 1, "Mediæval Manchester," by James Tait; No. 2, a work written in Latin by Mr. Little on the "Early Mediæval Latin Authors"; No. 3, The "Old Colonial System," by Gerald B. Hertz; No. 4, "Studies of Roman Imperialism," by W. T. Arnold, together with a memoir of the author; and No. 5, "Canon Peter Casolas' Pilgrimage to Jerusalem in 1494," by M. Newett. The economic series includes: No. 1, the well-known work by Professor S. J. Chapman on the "Lancashire Cotton Industry"; No. 2, "An Examination of the Cotton Industry in the United States," by T. W. Uttley; No. 3, "Some Modern Conditions and Recent Developments in Iron and Steel Production in America," by Frank Popplewell; No. 4, "Engineering and Industrial Conditions in the United States," by Frank Foster; No. 5, "The Rating of Land Values," by J. D. Chorlton; No. 6, "Dyeing in Germany and America," by Lyndney H. Higgins; and No. 7, "The Housing Problem in England," by Ernest R. Dewsnup. Nos. 2, 3, 4 and 6 of the economic series are the first four Gartside reports, that is, reports by fellows on the Gartside foundation who have traveled in the United States. All the numbers are separately bound and, being printed on thick paper, make very sizeable volumes. Professor Chapman's contribution was noticed in a previous issue (vol. xxii, p. 187); some of the other publications deserve and will hereafter receive a more extended review.

Professor Herbert E. Mills of Vassar College publishes, in two parts,

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Outlines of Economics: A Syllabus for Introductory Study (Poughkeepsie, New York, 1906–07; 69, 60 pp.) These *Outlines* have been prepared with the intent of guiding students in the use of various textbooks; they are based chiefly on Marshall's *Economics of Industry*, Seager's *Introduction to Economics* and Seligman's *Principles of Economics*, with incidental references to other works; and they will probably be found useful by students of elementary economics.

Every teacher of economics realizes how inadequate is the concrete knowledge of industrial facts possessed by the average college class that comes under his instruction. Making bricks without straw was a simple task compared to the effort to cultivate economic thinking in minds ignorant of the sources of the great staple products of general consumption, and of the methods by which they are extracted, worked up and distributed. Now that children are no longer expected to have any time left over from their school exercises for the acquisition of useful knowledge by the old-fashioned method of reading books, the school reading-book on geography, natural history, anthropology and various other more or less important sections of the encyclopædia has come into vogue. Since this is the way the thing must be done, we are glad to see added to the shelf of school readers an excellent little volume, *Foods, or How the World is Fed*, by Frank G. Carpenter (New York, The American Book Company, 1907; 362 pp.). By the device of taking the reader, in imagination, to the ranch, the farm, the rice field, the fishing banks, the coffee plantations, the orchards and vineyards, the book is made interesting; and the boy who has read it will be much better prepared for economic studies later on than the boy who has never become interested in any of these things.

The lectures which Professor Laughlin delivered in 1906 before the Berlin Association for the Development of Social Science have appeared in English under the title of *Industrial America* (New York, Scribners, 1906; 261 pp.). According to the preface, the reason for their appearance in English dress is "that possibly they may be useful to readers in this country who may not have time to give to an extensive course of reading." It must be said, however, that the lectures are so elementary and the lecturer's conclusions so trite that it is doubtful whether they will be of much use to those who have time for even a brief course of reading. As regards the Germans to whom the lectures were addressed, it is to be hoped that they have not taken Professor Laughlin's extreme views on the tariff and his belated doctrines on the labor question as fairly representing the attitude of American economists. It is significant that, in his essay on the status of economic thought in the United

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States, a paragraph nominally devoted to the investigations of American economists on practical questions deals chiefly with the attack on the quantity theory of money, for which Professor Laughlin himself is responsible, and that no mention is made of the fact that the great majority of the leading economists in the United States disagree with Professor Laughlin's contentions.

Professor Nathaniel Southgate Shaler's treatise on *The Citizen* (New York, A. S. Barnes and Company, 1904; 346 pp.) is an interesting discussion of the rights and duties of citizenship. Among the more important chapters are those on "Wealth" (chapter ix) and on the "Negro Question" (chapter xi). Throughout the discussion of the relation between democracy and modern industrialism the author's point of view is a very conservative one.

Citizenship and the Schools, by Jeremiah W. Jenks (New York, Henry Holt and Company, 1906; ix, 264 pp.), is a collection of addresses delivered and articles previously published by the author. Chapter vi on "Free Speech in American Universities," written at the time of the resignation of President E. B. Andrews from Brown University but not published at that time, is as strong a defense of academic liberty as can be found. Another notable chapter is that on "School-Book Legislation," first published in 1891 and now revised.

Among recent elementary treatises on the American system of government are *School Civics*, by Frank D. Boynton (Boston, Ginn and Company, 1904; iv, 368, xli pp.), which is a clearly written manual for the use of grammar and high school pupils; *Civics*, by Waldo H. Sherman (New York, The Macmillan Company, 1905; x, 328 pp.), the characteristic feature of which is the attempt to illustrate the principles of government in a graphic way by tracing them through the settlement and development of a community organized by the pupils; *Training for Citizenship*, by Joseph W. Smith (Lathrop Publishing Company, 1902; 345 pp.), an elementary treatise, especially good on the legal side; and *Municipal Government of the City of New York*, by Abby G. Baker and Abby H. Ware (Boston, Ginn and Company, 1906, xii, 350 pp.). The last volume, intended for grade and high school pupils, is executed with great care and skill. The material is well organized, clearly presented and strengthened by abundant historical and illustrative features.

Students of municipal science and framers of city charters are indebted to Mr. A. R. Hatton of the department of political science at the University of Chicago for the *Digest of City Charters* (Chicago, 1906; 351 pp.), prepared for the recent Chicago Charter Convention.

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The compilation presents, under classified heads, the main provisions of constitutions, charters and other statutes relating to the structure and powers of the governments of important cities in Europe and America. The arrangement facilitates the study of the various municipal experiments from a comparative point of view and renders the volume a convenient source-book for students of municipal administration. Copies can be obtained from the secretary of the convention, Mr. M. L. McKinley, 171 Washington Street, Chicago.

Mr. Arthur Train, an assistant district attorney who is also a good story-teller, gives us in *The Prisoner at the Bar* (New York, Charles Scribner's Sons, 1906; xi, 349 pp.) valuable information in most entertaining form. His book describes the procedure in cases of crime in New York City, from the point of arresting the offender up to the pronouncing of sentence upon him. Mr. Train's greatest service, perhaps, lies in his showing, partly intentionally but partly unconsciously, the extent to which we tolerate mediæval methods ill-adapted to modern conditions, and the extent to which, in practice at least, we hold the mediæval theory that vengeance is the object of punishment. The human failings of judges, who should be all-wise and all-patient; the many tricky devices resorted to by counsel; the irritating delays which are very apt to occur; the influence of the yellow press; the susceptibility of the average jury to any emotional appeal, however unreasonable—all these defects, and more, are admirably set forth. No radical changes are suggested, but the clear account of existing methods cannot fail to provoke thought and discussion as to possible improvements.

Mr. C. S. Kenny's excellent *Outlines of Criminal Law*, which appeared in England in 1902 and embodied the substance of lectures delivered at Cambridge year by year for quarter of a century, has been "revised and adapted for American scholars" by Mr. J. H. Webb, of the law department of Yale University (New York, The Macmillan Company, 1907; xxi, 404 pp.). The adaptation has involved the omission of considerable portions of the original text and the addition of many pages written by the editor. To students of comparative jurisprudence the variant developments of legislation regarding crimes in Great Britain and in the United States are of peculiar interest; and to students of social science (to say nothing of our legislators) a comparative treatment of both bodies of law would be of more value than the presentation of either system by itself. Such students will therefore regret that Mr. Webb has omitted most passages regarding "modern English statutes and rules which do not obtain in the United States";

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and the fact that he has retained matter relating to certain English statutes which to him "suggest . . . reforms . . . which it would be prudent to adopt in the United States" (preface, p. x) will not satisfy them, for they would like to form their own conclusions as to what borrowings would be prudent. For the purpose of American students who intend to practise law, the editor's omissions are, however, perhaps as legitimate as his additions are necessary; but it is difficult to understand why he has not seen fit to indicate, by any typographical signs or devices, what parts of the text and which of the notes are his.

The demand for small books on Roman law has recently evoked two translations of French treatises. The introductory part of Professor P. F. Girard's standard *Manuel élémentaire de droit romain* has been put into English by Professors A. H. F. Lefroy and J. H. Cameron, of Toronto, and is published under the title: *A Short History of the Roman Law* (Toronto, Canada Law Book Company, 1906; v, 220 pp.). Girard is worth translating, and the translation is well done. There is probably no history of Roman law accessible in English that is at once equally good and equally brief. A less judicious choice has been made by Dr. C. P. Sherman, of Yale University in translating Prof. F. Bernard's *First Year of Roman Law* (New York, Oxford University Press, American Branch, 1906; xii, 326 pp.). Bernard's work is not of the first rank and it is ill-adapted to the needs of English-speaking law students. The law of persons is treated with a fulness which is unnecessary in an introductory work, and the law of obligations is omitted. The fact that French students take up obligations in their second year is no reason why English and American students should not have a complete outline of the institutes of Roman private law in a single volume. Dr. Sherman's translation is not good, and the notes which he has added are of little value.

One of the few original workers in the field of Roman law among English-speaking scholars, and one of the most conscientious and painstaking, is Dr. E. C. Clark, Regius professor of civil law in the University of Cambridge; and his *History of Roman Private Law, Part I, Sources* Cambridge University Press, 1906; New York, G. P. Putnam's Sons; 168 pp.) promises to be an important work. The general reader should however be warned that Professor Clark's writing is not easy reading; and that the completed work is more likely to be recognized as a standard book of reference for scholars than to be used as an introductory treatise.

Professor John W. Salmond's *Jurisprudence*, which was reviewed four years ago in this QUARTERLY (vol. xviii, pp. 609–702), appears in

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a second edition (London, Stevens and Haynes, 1907; xv, 518 pp.). It has been revised throughout; some portions have been omitted, as unsuited to a general and introductory treatise; and a new chapter has been added on "Other Kinds of Law" than positive national law. In this new chapter, however, are included passages which appeared elsewhere in the first edition. Professor Salmond persists (in our judgment rightly) in laying stress upon adjudication as the principal source of law; but he is still unable to see that adjudication is only a highly systematized form of deciding controversies, that controversies were decided in primitive communities before distinct organs of adjudication had developed, and that the customs recognized, defined and enforced through such ante-judicial community decisions had all the essential characteristics of positive law. Whether the author's position in this and other controverted matters be approved or not, it must be recognized that he is an independent thinker and that his book is not a mere compilation but contains contributions to legal science.

In his *Presupposti filosofici della nozione del diritto* (Bologna, Zanichelli, 1905; 192 pp.), Professor Giorgio del Vecchio points out that we all possess the "notion" of law; in legal propositions, despite their number and variety, we recognize the common quality of legality; and this notion is the "germ of the conceptual determination of law and the unshaken proof of its possibility" (p. 109). But before this germ can shoot up into a concept and bloom into a satisfactory definition, the essential element of the notion must be determined. This, the author maintains, is not to be found in the content of law, whether actual or ideal: we are not to ask what the law is or should be (*quid iuris?*) but what is law (*quid ius?*). The problem should be approached not from the side of content but from the side of form; and our question should be: what is the characteristic form (*forma logica*) of law? To those students to whom law is not so much a thing as a force, a third question would seem even more important, *viz.* what is the characteristic method in which law operates? It appears, however that to ask such a question is an unpardonable metaphysical sin (pp. 123 *et seq.* and 181). Mr. del Vecchio confines himself, in this treatise, to the "presuppositions" and formulates no definition of his own.

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